ARMORIAL BEARINGS p. 784

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The Solicitors' Journal

VOL. LXXX. **Saturday, October 3, 1936.** No. 40

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Current Topics.

Law Society Meeting: The Council.

CONTINUING our account of the papers read at the fifty-second Provincial Meeting of The Law Society, held at Nottingham, on the 22nd and 23rd of last month, we give hereunder summaries of the last three papers. A full report of these appears elsewhere in the present issue. Mr. DINGWALL L. BATESON began by saying that it was not many years since the title to his paper "The Work of the Council of The Law Society" would have been generally held, though quite wrongly, to contain a contradiction in terms, because it seemed to have been commonly believed by members of the profession that the Council, in fact, did no work. Recently, however, there appeared to have arisen a much greater interest in the Council and its operations, as a result of which it was thought by members of the Council that the paper could be read with some likelihood of appreciation. The speaker dealt with the qualification and election of president, vice-president and members of the Council, and the number of the latter with the proportion of provincial solicitors normally serving thereon, with the meetings of the Council, its statutory duties and the committees by which they are discharged. In regard to its origin, he emphasised that The Law Society was originally, and still is, a private institution. It came into being in 1739, although not established until 1825 as a society. Reference was made to the Solicitors Acts of 1933 and 1936, both promoted by the Council, and to the work of the Examination, Parliamentary, Finance, Scale, and Professional Purposes Committees. On the relationship subsisting between The Law Society and the Provincial Societies, it was pointed out that the latter, both directly and through the country members of the Council, not only send to the Council a great deal of the material with which the Council has to deal, but in all matters of paramount importance act as general advisers to the Council, so as to keep London in touch with the feelings and view of the country. The speaker concluded by urging the desirability of the general members of the profession attending the annual general meetings in London during July and the special general meetings in January. He cited a case where an advertised resolution put by a solicitor in the hall was voted upon "by the grand total of less than twenty persons," adding, "you will doubtless agree that this cannot properly represent the opinion of the profession on any subject." He reminded his hearers that the Press attended these meetings, which were reported as if they were representative, and he asked as some return for the work which the members of the Council do for them to come in future to the half-yearly meetings and bring their friends in the profession with them.

Unemployment Insurance: Courts of Referees.

IN a paper entitled "Courts of Referees under the Unemployment Insurance Acts," Mr. F. G. ROBINSON gave an interesting and lucid account of a highly specialised subject—one, moreover, from which the legal profession is to some extent excluded from taking an active part for, although a claimant is entitled to be represented by a person duly authorised on his behalf, legal practitioners are barred from acting in such capacity. A claimant in fact is frequently represented by his Trade Union Secretary and tribute was paid to the invaluable assistance given by the latter in innumerable cases, both to his members and the courts by the able and precise manner in which the points are presented, while the good feeling invariably displayed was stated to be beyond praise. Though excluded from pleading, members of the legal profession not infrequently take part in the work of these courts, the chairmen and reserve chairmen who number about 370 being almost exclusively possessed of a legal qualification. Indeed the Blanesburgh Committee appointed in 1928 "to consider, in the light of experience gained in the working of the Unemployment Insurance Scheme, what changes in the Scheme if any ought to be made" recommended that the chairman of the Court of Referees should in future always be a man of legal training. In practice the chairman is, it is explained, usually a barrister or solicitor living in the district of the court with personal knowledge of the industrial conditions of the neighbourhood. The Umpire and Deputy Umpire who hear appeals lodged either by the Insurance Officer or the claimant or his association are, of course, members of the Bar. The decisions given on appeal bind the Courts of Referees in all subsequent cases clearly falling within these precedents, and thus an important mass of case law has been built up. The magnitude of the work involved in these appeals may be illustrated by the fact that 8,746 decisions were given during 1935, appeals being allowed in 5,087 and disallowed in 3,659 cases. The speaker intimated that his remarks might help to assure both members of the public and claimants that the procedure for the determination of claims relating to the payment of vast sums of money was conducted with the fairness and impartiality which should characterise such proceedings.

Defamation.

Mr. ISIDORE KERMAN opened his paper entitled "Problems on the Law of Defamation in Relation to the Press, Literary Work and Broadcasting," by referring to a comparatively recent letter in *The Times*, signed by a number of authors and pleading for "drastic reforms" in the law relating to literary libel (80 SOL. J. 214), and to a representative conference of a section of the Press, at which a suggested Bill to amend the

law of libel was put forward (80 Sol. J. 493). He thought it not unfair to say that the demand for reform emanated substantially from or on behalf of those who had been or might be made answerable for defamatory publication rather than from those who might be impugned, and he submitted that such reform as might be required was merely in the clarification of a wholesome and beneficial branch of the common law rather than a cutting down of the rights which it has conferred. The speaker went on to examine and strongly to criticise the proposed Bill which, it may be remembered, *inter alia*, restricted, with certain exceptions, a right of action to cases where proof of actual damage was forthcoming and generally limited the amount of costs recoverable to the amount of the damages unless the judge certified that there was reasonable ground for bringing the action. Exception was taken to the phrase "unscrupulous persons alike among laymen and members of the legal profession" in the letter above referred to, to whom the present conditions were said to be a direct incentive, and the speaker made some interesting observations on the extent of speculative actions in practice. With regard to the adaptation or amendment of the law to meet the situation created by broadcasting, the speaker suggested that at the least the liability in respect of matters so disseminated should be placed on the footing of libel and not of oral publication. To treat broadcast utterances as purely a form of slander and subject to the same rules of law could not, it was urged, be justified. It was submitted, moreover, that the time must come, if it was not already at hand, when it should be seriously and carefully weighed whether a definite code should be enacted in respect of publication by broadcasting in which there should be a liability within proper limitations for all erroneous matter stated concerning the private individual or trading concern—a code in which the law concerning the element of malice should find no part. Provision for the compulsory correction or withdrawal of defamatory matter by the means employed for its dissemination was another matter which, it was intimated, might well be considered. Except for the need for greater precision and closer definition of the law, if such were capable of achievement, the speaker thought that we were in this country most fortunate in the evolution of our law of defamation. The proneness of juries to award heavy damages for the wide publicity given by the film or the Press to that which was defamatory was not, it was urged, necessarily an indication that insufficient licence was allowed; it might, on the contrary, be the index on which was recorded the continued preference of the English people for restraint and courtesy in the place of a sensational and intrusive national press such as was to be found in some other countries.

The Decision in *Rex* v. *Sheridan*.

We have already noted in this column, in our issues of 1st August and 8th August, statements by Mr. Ronald Powell and Mr. Claud Mullins concerning the decision in *Rex* v. *Sheridan* (80 Sol. J. 535), in which the Court of Appeal quashed a conviction on the ground of *autrefois convict*. The accused, it may be remembered, consented to be dealt with summarily at petty sessions, and the justices after hearing the evidence announced that they found him guilty. Certain previous offences were then proved against the accused, whereupon he was committed for trial at Quarter Sessions. A further sequel to this decision is a series of observations formulated by the Epsom justices with the object of obtaining the opinion of other magistrates in the county and of considering the procedure to be adopted in petty sessions so as to safeguard as far as possible the interests of the accused. It is thought, they state, in many petty sessional courts that the justices, when dealing with an indictable offence which may be tried summarily, have, out of consideration for the accused, refrained from inquiring as to his character and antecedents until after he has elected to be tried summarily and has pleaded guilty or has been found guilty of the offence. But, it is urged, in view of the judgment in *Sheridan's Case*, justices are now required as a preliminary to dealing summarily with an indictable offence to hear and take into consideration the character and antecedents of the accused to enable them to decide whether they ought to deal with the case summarily. In such cases, where the character of the accused is bad it would be difficult for the justices to dismiss such information from their minds when trying the case and, it is intimated, there is some danger of one of the cardinal principles of British justice being violated. It is suggested, moreover, that some of the chief difficulties will arise where the accused has been previously convicted, but it might not be proper to say that his character was bad. A letter embodying observations to the foregoing effect with an accompanying resolution which had been received was considered at a meeting of the Surrey Magistrates at Kingston-on-Thames some ten days ago when it was agreed to refer the matter to the General Purposes Committee of Quarter Sessions. Meanwhile a suggestion made by Mr. T. H. W. Pitcher (chairman) may be noted. He thought a way out (we quote from *The Times*) would be to ask the clerk of the court or the police whether there was any objection, in their view, to trying the case summarily, and if there was not the justices could proceed to deal with it; otherwise, if the justices thought that the evidence of character would affect their minds, the best course would be to commit the case for trial. Mr. W. O. Bailey (deputy chairman of the Kingston Bench) said that justices ought not to set themselves out to "dodge" the decision. He thought it would prove workable, but if at the end of a year it was found not to be workable there would be a strong case for legislation.

Paid Chairmen of Quarter Sessions.

Sir Thomas Foster, K.C., who enjoys the distinction of being the first to be elected paid chairman of Middlesex Quarter Sessions, has intimated his intention of retiring from the post on 23rd October, coincidently with the attainment of his seventy-seventh birthday. During the comparatively short time that he has acted as chairman he has discharged the duties attaching to the post with much acceptance and general regret will be felt at his resignation. When, a year or two ago, a salary was attached to the chairmanship and deputy chairmanship at these sessions, it was, in the view of some critics, considered to be an innovation not to be commended, but it was really a move in the right direction of securing for the posts those best qualified for the duties. In time it will probably be recognised that no quarter sessions can be regarded as properly equipped unless they are presided over by chairmen "legally qualified," an expression defined in the recently issued report of the Committee on Quarter Sessions as implying an experience gained by ten years' practice at the English Bar; and if the various suggestions put forward by that Committee are carried into effect the duties of these chairmen are likely to be more onerous in the future, hence the more urgent necessity for those functionaries being "legally qualified," and this can best be secured by making the post pecuniarily worth while for members of the Bar offering their services.

Road Census Report.

Figures set out in the recently issued report of the road traffic census taken during August of last year on Class I roads in Great Britain under the ægis of the Ministry of Transport should provide valuable data for the planning of road improvements. It is of some interest to recall, as the report points out, that the first census of traffic on Class I roads was taken in August, 1922, similar statistics being collected in 1925, 1928 and 1931. The census which would normally have been taken in 1934 was postponed for financial reasons until last year, when the mileage of these roads was

26,779—some 260 greater than that of roads of the same class four years previously. We do not propose to deal extensively with the figures, which have received sufficient publicity in the daily press, but it may be interesting to note as illustrating the growth of traffic during the recent years that the average daily numbers of vehicles passing 4,800 census points show an increase in the case of mechanically propelled passenger vehicles of approximately one-third and for goods vehicles of some 44 per cent. Horse-drawn traffic has, however, declined by a little more than a quarter. "Daily average" means the sixteen hours between 6 a.m. and 10 p.m. The average daily number of mechanically propelled passenger vehicles passing these points last year was 7,152,818, of similarly propelled goods vehicles 1,684,323, and of horse-drawn vehicles 86,212. Changes in the character of vehicles since 1931 has led to the adoption of a different system of assumed average weights to various classes of vehicles, and the tonnage figures thus exhibit different proportions of increase or decrease. Passenger tonnage is estimated to have increased by some 22 per cent., goods tonnage by some 46 per cent., while in the case of horse-drawn vehicles the tonnage is lower by some 30 per cent. During the period in question the total number of vehicles licensed has increased by about 16 per cent. The use of pedal cycles has increased enormously. The daily average number passing the aforesaid 4,800 census points in 1935 was 3,109,723, compared with 1,594,867 in 1931—an increase of nearly 95 per cent. In 1935, for the first time, a record was taken of the number of pedestrians passing certain census points. The count, the report states, was confined to those points at which no footpath existed or at which the footpath did not exceed three feet in width, the object being to ascertain the volume of pedestrian traffic at such points and of measuring the need for footpaths or additional footpath accommodation. The daily average total at the 2,299 points selected for observation was 195,519. The number of points where no footpath existed was 2,216, and the number of pedestrians recorded per day was 183,943 or 83 per point. It is noted that at some of these points there was a grass verge which could be used by pedestrians. The average daily number per point where the footpath was three feet or less in width was 139. In some cases records taken of pedestrians using the carriageway or footpath where the latter existed show a decided preference for the former, but as nothing is stated concerning the condition of the latter, it is probable that the figures are not as significant as at first sight they appear. The report—Road Traffic Census, 1935—is published by H.M. Stationery Office at 2s. net.

Penalties for Motoring Offences.

THE circular just issued by the Home Office dealing with the need of greater uniformity in the treatment of those convicted of motoring offences contains some highly significant figures derived from the return of offences relating to motor vehicles presented to Parliament last May, which showed that during 1935 the total number of such offences for which convictions were recorded in England and Wales was 341,852. Disregarding, for the purpose of comparing one area with another, districts where the total number of convictions for a particular offence were less than thirty during the year, it appears that out of the total number of convictions for driving under the influence of drink, etc., 70 per cent. resulted in the offenders' licences being suspended, but that the proportion varied between 91 per cent. in one district and 36 per cent. in another. In the case of convictions for driving recklessly or dangerously the total, highest, and lowest percentages of disqualifications were respectively 36, 65 and 15. Corresponding figures relating to endorsements for careless driving were forty-seven, ninety-six and nil. The most remarkable divergence is recorded in the case of disqualifications for failure to insure against third-party risks where the percentages were 38, 100 and 4. The circular sets out the law on the subject (which need not be repeated here), and while recognition is accorded to the desirability of the courts of summary jurisdiction making proper use of the discretion vested on them in dealing with individual offenders, as also to the fact that it is not to be expected that there should be any precise uniformity of practice throughout the country on the question whether or not an offender's licence ought to be suspended or endorsed on his conviction, it is intimated that the differences of treatment disclosed by the figures are not to be accounted for merely by the circumstances of the individual cases dealt with at the different courts. "There must," it is said, "in particular be some fundamental difference of opinion as to what constitutes a 'special reason,' with the result that the same offender if convicted in one area may expect that his licence may be suspended or endorsed almost as a matter of course, while in another area he may almost count on the court ordering otherwise." The suggestion that a "special reason" is to be found in the generality of cases is negatived, and the clear intention of Parliament that suspension or endorsement of the offender's licence should follow in the absence of such invoked; and, while it is recognised that what constitutes a "special reason" in a particular case must necessarily be left to each court to decide, having regard to all the circumstances, the Home Secretary urges that the matter be considered with a view to determining whether existing practice in the various courts concerned is in full accord with what Parliament intended.

Juvenile Courts: Election of Panels.

READERS' attention may be briefly directed to the circular recently issued from the Home Office and entitled "Election of New Juvenile Court Panels, 1936," in which clerks to the justices are asked to bring to the notice of the latter certain considerations in view of the appointment, which, in accordance with the provisions of r. 6 of the Juvenile Court (Consolidation) Rules, must be made before 1st November, 1936, of new juvenile court panels. The desirability of most careful attention being paid to a proper selection of the panels in view of the importance of the work is emphasised. Attention is drawn with reference to some words of the Lord Chief Justice to the desirability of magistrates being of parental (40–60) rather than grandfatherly age, and where there is a choice between two equally good candidates it is urged that there is much, or indeed everything, to be said for selecting the younger. Other points insisted upon are the importance of the panel not being numerically larger than is required for the work and of opportunities of sitting sufficiently often to gain the experience necessary for wise decisions, the value of selecting a good experienced permanent chairman, and the desirability of continuity of policy and treatment. A reminder is given that r. 10 requires that the names and addresses of all justices appointed to serve on the panel shall be notified immediately after their appointment to the Home Secretary, who, it is intimated, desires that the age of each justice on the panel should be included in the return.

Rules and Orders: Tithe.

READERS' attention is drawn to the Tithe Redemption Annuities Rules, 1936 (S.R. & O. 1936, No. 1012), which came into operation on 2nd October. The rules prescribe forms for the particulars required by s. 18 (9) of the Tithe Act, 1936, to be furnished to the Tithe Redemption Commission on a change of ownership of land in respect of which an annuity under the management of the Commission is charged. These forms are set out in the First Schedule to the Rules. Also in the Second Schedule to the Rules a form is prescribed for an application to a surveyor of taxes for a certificate of annual value in accordance with the Fourth Schedule, para. 2, of the Act. The latter must be in duplicate. The Rules are published by H.M. Stationery Office, price 2d. net.

Mr. H. Basil Cahusac.

It is with the deepest regret that we have to announce the death of Mr. Herbert Basil Cahusac, the Managing Director of The Solicitors' Law Stationery Society, Limited, the proprietors of this Journal. Mr. Cahusac, who was aged seventy-two, though himself a printer, had spent so much of his lifetime in the service of a Society owned and governed by members of the legal profession, that we feel his memory is entitled to the same respect as that of an honoured member.

In 1892, some five years after the constitution of the Society, Mr. Cahusac was appointed its Secretary and, thereafter, what had been a comparatively unsuccessful organisation steadily began to demonstrate its usefulness and prosper. His abilities were recognised by his appointment in 1898 as General Manager and Secretary of the Society, and in 1920, by which time the activities of the Society's business had increased out of all recognition, he was made its Managing Director, a position he held at his death. His qualities which contributed so largely to the success of the Society were not only business acumen and zeal, but coupled with these was a remarkable gentleness of character and understanding of men, which inspired in those who worked with and under him an almost unique loyalty and affection. This affection was clearly shown by the fact that practically the whole of the employees of the firm in the London area attended either the funeral service at Cookham or the memorial service held at St. Bride's Church, Fleet Street.

Mr. Cahusac was on the Council of the London Master Printers' Association, representing the London Central Districts, and was in 1916 elected to the Council of the British Federation of Master Printers. He was also the founder of the Law Stationers' Association in 1919 and had been its Chairman ever since that time.

As Managing Director of the Society Mr. Cahusac took a very personal interest in the welfare and management of this Journal, and since its acquisition by the Society in 1920 its success and position has been very largely due to his enthusiasm and broad-minded encouragement.

Mr. Cahusac died in harness and we feel sure that he would not have desired the end to come otherwise. His loss is a grievous one to the Society and he will long be remembered with respect and affection. He leaves a widow, two sons and two daughters.

Armorial Bearings.

The ambit of the law relating to the use of armorial bearings has been strikingly exemplified in two cases which came before the courts recently.

In one of these, not only was the defendant taken aback but the tribunal found the point a novel one. A collector had purchased at a sale four eighteenth century chairs which had, stamped on their leather backs, crests of some former owner, not, be it noted, crests of the collector himself or of his own family. He placed these chairs in his hall where they were, by chance, espied by an inspector who happened to be paying a visit of enquiry upon some other matter. The chair owner was thereupon summoned for using armorial bearings without a licence, it being maintained by the prosecution that, upon the facts, the unwary collector had no defence. The somewhat surprised and obviously sympathetic bench in this case dismissed the summons on the payment of court costs and the fee (presumably the licence fee) of one guinea.

In the other case, where a school crest consisting of a shield with a lamp of knowledge quartered thereon, surmounting the motto "*per arte lucem*," was displayed on a school notice board, the bench was less lenient and imposed a fine of 40s.

In the circumstances, a short summary of the law may prove useful to many among us who may have put themselves, unsuspectingly and innocently, within the risk of a prosecution.

The present law in the matter came into force under the Revenue Act, 1869 (59 & 60 Vict., c. 14). This enacted (s. 19) that the following duties should be paid annually ". . . upon licences taken out under the provisions of this Act by the person who . . . wears or uses the armorial bearings—

	£	s.	d.
"If such armorial bearings shall be painted, marked or affixed on or to any carriage	2	2	0
"If such armorial bearings shall not be so painted, marked, or affixed, but shall be otherwise worn or used	1	1	0"

Section 19 (13) tells us that "Armorial bearings means and includes any armorial bearing, crest or ensign, by whatever name the same shall be called, and whether such armorial bearing shall be registered in the College of Arms or not."

The scope of the definition is a wide one. In *Milligan* v. *Cowan*, 60 J.P. 378, it was held to embrace a device consisting of a shield with a lion rampant, surmounted by a crown, there being also a bar or other cutting at the base of the shield but no wreath.

"Highmore, Local Taxation Licences," 2nd ed., 1919, endeavours to allay the apprehension which the comprehensiveness of the aforesaid definition may naturally give rise to. He does this in a negative phrasing, by telling us that a licence is not required "for any device or matter engraved on a seal which is not strictly in the nature of an armorial bearing, being neither a coat of arms nor a crest with a wreath or scroll attached, nor any other heraldic particular distinctly indicating the connection of the device with a coat of arms or crest."

It would appear, however, that if a shield, at least, is used even with a home-made blazoning or quartering or ornamentation, no matter how fanciful may be the animal, vegetable or other object displayed, it will come within the definition. Those desirous of distinguishing themselves or their surroundings by such insignia should, therefore, be on their guard.

Certain exemptions are accorded by the Act to persons, corporations or royal burghs using in virtue of their offices "the arms or insignia of the Royal family."

When a club or society has taken out a licence for the use of armorial bearings, the individual members of such are not usually required to take out separate licences, provided that their user of the armorial bearings in question is either at the club or society or upon its business. This would, apparently, cover such minor matters as the use of a club crest on notepaper or a device on cap or "blazer."

The same principle applies where the head of a household has a licence. Members of the family may, it seems, safely use the arms on notepaper, or in the house or premises. But if they use the crested paper away from home or disport the ensign on ring or pin outside they may incur a penalty.

There are certain other exemptions granted in respect of ordinary trade use which cannot be dealt with here and for which readers are referred to the text-books on the subject. It is the private user of these ensigns who should be specially careful.

It must be emphasised that it is "user" as contrasted with "assumption" of the crest or arms which is the dominant factor in each case. This "user" will be construed in its ordinary sense. If the crest is shown upon an article in actual use, such as a chair to be sat on, a spoon to stir one's tea with, a dressing case to transport my lady's beautifying equipment to the seaside, then the liability would inevitably appear to arise.

The penalty for non-compliance with the Act is "twenty pounds over and above any other penalty to which such person shall be liable, provided that the said penalty shall not be recoverable where the defendant in any proceeding

for the recovery of the same shall prove to the satisfaction of the justices before whom such proceeding shall be depending that he had delivered a declaration and paid the proper duties and obtained a proper licence within the time prescribed by this Act."

Sections 22 and 23 give, in effect, twenty-one days' of grace from the beginning of the user during which the person liable may make the declaration which it is incumbent upon him under the Act to make and to take out the appropriate licence. In any case, the justices would appear to have unlimited powers as regards the mitigation of the penalty in the case of a first offence.

Company Law and Practice.

What Bodies of Persons may constitute the Public in Relation to a Prospectus.

THE task of attaching a meaning to those two words "the public," in relation principally to the offering of shares, would be greatly simplified if the 1929 Act contained some definition of them. But that, unfortunately, is not the case, and we must endeavour to decide the point by some consideration of the relevant sections of that Act and of some of the decisions which bear upon the matter.

A prospectus, which (as everybody knows) is the most usual and most convenient method of obtaining subscriptions for shares from the world at large, is defined by s. 380 as "any prospectus, notice, circular, advertisement, or other invitation offering to *the public* (the italics are mine) for subscription or purchase any shares or debentures of the company." Now, to take first, two comparatively clear cases: an offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, is not to be deemed an offer to the public for the purposes of s. 354 (this is the provision contained in s. 354 (4)); and secondly, the provisions of s. 356 (2), which imposes certain restrictions upon an offer in writing to any member of the public of any shares for purchase, are not to apply where the offer is made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares (see s. 356 (2) (*c*)). From this, I think, we may infer that had the Legislature not considered that these two classes of persons might constitute the public or members thereof, there would have been no need thus to exclude them; so that *primâ facie* they are members of the public.

It is reasoning on those lines that we can apply to s. 35 and the question whether existing members or debenture-holders of a company are also members of the public. Section 35 deals with the specific requirements as to particulars in prospectuses, and, by sub-s. (3), it is illegal to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus that complies with the requirements of the section, unless the form of application was issued (*inter alia*) in relation to shares or debentures which were not offered to the public. Any person who acts in contravention of the provisions of s. 35 (3) incurs the liability of a fine up to £500; so that there is a definite practical, as well as an academic, side to the question. The section does not apply (by virtue of sub-s. (5)) to the issue to existing members or debenture-holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; but, subject thereto, s. 35 does apply to a prospectus or form of application, whether issued on or with reference to the formation of a company or subsequently. The section—or, rather, the portion of it that I have mentioned—is by no means easy to understand, for, on one hand, the existing members of the company would seem to be, in the first place, regarded as members of the public in order to warrant their exclusion by the Legislature; while, if that is the case, it would seem extremely hard to think of any class of persons which is not the public. The practical difficulty which arises on the point appears, however, to be considerably lessened by the view of the matter which the Board of Trade takes, which view is, according to the learned editors of one text-book, that a circular or notice to members or debenture-holders does not constitute an offer to "the public," unless those members or debenture-holders (as the case may be) have the right to renounce in favour of other persons; and in consequence it is the general practice not to file as a prospectus such a circular or notice which confers no right of renunciation. Some confirmation of this standpoint appears from ss. 354 (2) and 356 (7), to which I must refer my readers owing to the restrictions of space at our disposal.

To turn now to some of the opinions on the matter that have been voiced by the courts from time to time. It appears clear from the decision in *Booth* v. *New Afrikander Gold Mining Company Limited* [1903] 1 Ch. 295, that, on the reconstruction of a company, an offer to the members of that—the old—company, of shares in the new company in respect of their shareholding in the old company, does not constitute an offer to the public. And in the well-known case of *Burrows* v. *Matabele Gold Reefs and Estates Company Limited* [1901] 2 Ch. 23, Farwell, J., in the course of his judgment, used the following words at p. 27 of the report: "An offer is not the less made to the public because it is sent to shareholders or debenture-holders as well as to other persons, or because it is not advertised in the public newspapers. But if it is sent solely to the shareholders or debenture-holders of the company, there is no offer to the public. The distinction is between persons who are members or debenture-holders of the company, on the one hand, and those who are not, on the other." The distinction made by Farwell, J., in this case is clearly expressed, and it is generally considered to be consonant with the principles of practice and common sense, while possessing in addition the attribute of being good law.

The learned editors of "Palmer" give the test for determining whether a given body of persons does or does not constitute the public in these words: "Is there a sufficient subsisting connection between the company or the person making the offer and the person to whom the offer is made as friends, customers, or co-adventurers, etc., or are the persons mere outsiders?" If the latter, they continue, the offer is one to the public, and then the fact that the offer is made to a limited circle, e.g., to the members of a single company (which is not the company offering the shares, or the company on whose behalf the offer is made), or to the members of a few companies, or to the members of a particular profession, or to the investors in a particular class of companies, or that the prospectus states that preference in allotment will be given to a particular class or section of the public, does not make it the less an offer to the public. "It is apprehended that the mere fact that an offer is made by circular addressed by name to a number of persons does not of itself take it out of the category of offers to the public": *ibid.*

Some necessarily brief consideration of certain decisions will assist us in appreciating the accuracy of the formulation to which I have just referred. For example, it seems curious to say that in certain circumstances one person may constitute the public, but in the comparatively recent case of *Lynde* v. *Nash* [1929] A.C. 158, Lord Sumner said, at p. 169: "'The public' in the definition s. 285 is of course a general word. No particular numbers are prescribed. Anything from two to infinity may serve; perhaps even one, if he is intended to be the first of a series of subscribers, but makes further proceedings needless by himself subscribing the whole. The point is that the offer is such as to be open to anyone who

brings his money and applies in due form, whether the prospectus was addressed to him on behalf of the company or not. A private communication is not thus open . . ." And, at p. 171, Lord Buckmaster expressed himself in the following terms: "A document is not a prospectus unless it is an invitation to the public, but if it satisfied this condition it is not the less a prospectus, because it is issued to a defined class of the public. Whether a prospectus so limited in its application that only a special set of people were invited could be properly defined as a prospectus, it is not necessary for the present case to decide, for the documents . . . were in terms quite general."

With regard to the type of prospectus lastly referred to, i.e., directed to a defined class of the public, it was decided in the Scottish case of *Sleigh* v. *Glasgow and Transvaal Options* (1904), Court of Sess. 6 F. 420, that a circular inviting subscriptions which was placed in the hands of the proposed directors' friends, to the number of forty, and which it was proposed should be shown to their friends, did not amount to an invitation to the public. And the same conclusion was reached in *Sherwell* v. *Combined Incandescent Mantles Syndicate Limited* [1907] W.N. 110, where the facts were not dissimilar to those in the case of which I have just made mention; but here the document was held not to be a prospectus, as its issue to the persons concerned had been unauthorised by the company, and was made by the directors as individuals without the authority of the company.

The question in each case resolves itself of necessity into one of fact, to a very large degree, and it is of course on those facts that each case must be considered. Besides the decisions that I have mentioned, there are others which shed light on the problem; but those—which are dealt with in the various text-books, I must leave to the diligence of my readers.

A Conveyancer's Diary.

[CONTRIBUTED.]

Enquiries from Trustees: Estoppel—II.

As we saw in the previous article, there is "no trust or relation between a trustee and a stranger about to deal with the *cestui que trust*." The moment that the stranger completes his purchase, by taking an assignment or conveyance of the interest, or any part of the interest, of the *cestui que trust*, that position is at an end. The purchaser becomes owner or mortgagee of whatever interest he acquires, and thus is as much a *cestui que trust* as the mortgagor or vendor. He becomes entitled to the same information and general consideration as an original *cestui que trust*.

One of his rights is, of course, to bring the action against the trustee for an account. It is out of this action that a claim may arise based on an incorrect statement of the trustee prior to the purchase. For if the statement be clear and precise, the trustee will be estopped from denying its truth, and must account on the basis of its truth.

Let us now assume that prior to the purchase such a statement was made, and that it was wrong; the trust fund is in fact a good deal less than it was stated to be. An action for an account is launched and the trustee is estopped from denying that the fund is as it was stated to be.

Suppose the statement relied on for the estoppel was made more than six years before the issue of the writ. It would seem that the trustees could successfully plead the Trustee Act, 1888. For there is no question here of fraud or of conversion to the trustees' own use. And, as Sir Arthur Underhill observes in his well-known text-book on Trusts (p. 497): "The Act is applicable to a claim for accounts to the extent that the plaintiff cannot pick holes in the account for more than six years before action" (cf. *Re Sharp* [1906] 1 Ch. 793). It would seem, therefore, that the trustees could account for six years back, and throughout that period the trust fund would appear at the lesser sum. Further back still is the estopping statement, of course. But the trustees could rejoin "that may have been true, but by six years ago the fund was as it is now, and you cannot ask us to go back further. It is not suggested that we have been fraudulent, nor that we have appropriated the balance. The Trustee Act, 1888, protects us."

What, again, is the position of a trustee who has retired? Mr. Withers suggests ("Withers on Reversions," p. 178) that not merely is a trustee not liable if he has retired before the action of account was launched, but that a trustee who has otherwise acted honestly can escape liability by retiring from the trust before the action is actually launched in order to escape liability. The problem depends on this: is an ex-trustee in general liable to the action of account? If he is, then he will be liable also on the estoppel; if he is not, he will escape, for an estoppel is a "shield and not a sword," and cannot arise unless there is independently an action to support it. The same kind of considerations obviously apply to the case where one of the trustees has died before the action was brought. Now, with the greatest respect to Mr. Withers, I do not find it easy to accept his view on this point. For it cannot be doubted that the estate of a co-trustee is liable for breaches of trust committed in his lifetime, and that a trustee who has retired is liable for breaches of trust before his retirement. In the case we are considering there is, of course, no actual breach of trust. But in the "conventional state of facts" brought into being by the statement creating the estoppel, the trust fund was larger at the date of the statement than it was at the date of action brought. The trustees are *ex hypothesi* unable to give a good account of such diminution. If the diminution had already occurred (as it must be taken to have occurred) by the date of the death or retirement of the former trustee, I should have thought he was liable equally with the continuing trustees in a manner analogous for this purpose to his liability for breach of trust during his time as a trustee. This view is supported by the fact that in *Porter* v. *Moore* [1904] 2 Ch. 367, which was a case on estoppel, one of the trustees died after service or before appearance, and the action was ordered to be carried on against his executors. If he had died before the issue of the writ, it would, of course, have been a stronger point in favour of the view I have expressed. But, so far as it goes, it is of some assistance.

Another very difficult problem may arise where two trustees have made the statement on which the estoppel is founded, and one of them has died or retired. Often the action is launched in the first place against the surviving or continuing trustee. Suppose he loses the action, or settles it, and has to pay up. Can he recover contribution from his former co-trustee, or the deceased co-trustee's estate? This is a point upon which there appears to be no direct authority, and it is very difficult to form a clear view of the matter of principle. They are not joint-tortfeasors, so their position is in no way affected by the recent Act. Nor are they strictly trustees guilty of a breach of trust and *in pari delicto*, between whom there has always been contribution.

They have committed no breach of trust; they are merely accounting parties whose account is being taken under the court instead of privately. Their liability arises under a rule of evidence, that of estoppel, not for anything they have done wrong. Moreover, between themselves there is no such estoppel. Can it be said that there is anything here to found a claim for contribution? On the other hand, it can be argued that contribution between trustees who have committed a *wrong* is an equitable remedy given out of the inherent overriding fairness of the court of conscience: how much more then should there be contribution where there has been no wrong, and one man is damnified through misfortune flowing

from an act in which both shared? It seems to be very difficult to decide how the legal position would work out if such a case came to trial. On the other hand, it is so manifest that common fairness demands contribution in such circumstances that it is not very likely that anyone against whom it was claimed would incur the odium of putting up a defence that has so few merits about it, and where the person is dead, it seems highly probable that the court would give his executors leave to settle the matter.

Next, there is the question whether anything can be recovered by persons made liable on estoppel from the solicitors, if there were any, who advised them to make the unfortunate statement, and drew it up. Clearly, there is a cause of action in tort for negligence against the solicitors in such a case. For a solicitor has a duty, and an especially exacting duty, to his client. Nor would it be easy to rebut the clear *primâ facie* impression that a solicitor who drafts a wrong statement of this sort cannot have taken proper care. He has all the trust documents at his disposal, and if he is going to allow the trustees to make so dangerous a statement, he ought to go through the whole matter with great care, and see that he gets it right. It is very difficult to see how the solicitors could escape liability to the damnified trustees in any normal circumstances. This is a matter that should be borne in mind by solicitors both in advising trustees to make such a statement at all, and in advising them what to say. The liability of the solicitors being founded in tort, the action against them could be defeated at any time more than six years after the statement was made by their pleading the Statute of Limitations. But, the statute is a mere defence; there would be no ground for striking out the statement of claim, and the action would come to trial if the plaintiff was sufficiently determined. The defence would be good, but the effect on the defendant's reputation for carefulness would not. A solicitor threatened with such an action should agree with his adversary quickly unless he has a substantial defence on the merits. On the other hand, if the view I have expressed above in regard to the Trustee Act, 1888, is correct, no case can normally arise in which the solicitor would have the benefit of the Limitation Act while his client would not be protected by lapse of time. If so, this point becomes of less importance.

So far we have been considering the case where the person to whom the statement founding the estoppel was made, and the person making it, were both acting in good faith. It need hardly be said that if the statement was made in bad faith very different considerations apply. But it is also necessary to notice that the highest good faith is necessary on the part of the person to whom the statement is made if it is to be valid as an estoppel. This point is sufficiently illustrated by the case of *Porter* v. *Moore* [1904] 2 Ch. 367. There the trustees' solicitors were asked for a statement about an equitable interest. They told the proposing purchaser that they never advised clients to sign such a document. The solicitors for the proposing purchaser, knowing this, got leave from the trustees' solicitors to attend upon one of the trustees, who happened also to be the doctor who had officiated at the birth of the *cestui que trust*, to get from him a statutory declaration as to the identity of the *cestui que trust*. When they had got that, they saw fit, for whatever reason, to proffer to him a statement of the fund with some sort of assurance that "it was all right," and obtain his signature. As a matter of fact, the statement itself was not "all right," nor was the procedure of the solicitors for the intending purchaser. The second trustee signed because he saw that the first had already done so. In this case the court held that though the statement was clear and precise, it had been obtained in such circumstances as to prevent it from operating as an estoppel. And it is reasonably clear that the principle on which the court would act in another such case would be that no such statement would found an estoppel unless there was the fullest good faith in the mode of obtaining it.

Landlord and Tenant Notebook.

Provision for Service of Notices.

EXPRESS provision for the mode of serving a notice to quit, or a notice to determine or to renew, is a matter to which draftsmen have paid too little attention. The importance of such a provision can be appreciated by reading the reports of two Irish appeals to the House of Lords, which appear, incidentally, in the same volume. *Liddy* v. *Kennedy* (1871), L.R. 5 H.L. 134, was a case in which the question of service had not been overlooked. The lease between the parties expressly empowered the landlord to take possession of and enter any portion of the premises demised upon giving to the tenant, or leaving at his usual or last known place of abode, a three months' notice of his intention to resume possession for building purposes. A notice was left with one Rosa Mulholland when the tenant, her employer, was away; she promised to deliver it to him on his return, saying she expected he would be back in a few days time. The issue left to the jury was whether the house where the notice was left was the tenant's usual place of abode. They found that it was. The appeals which followed were founded on weightier issues than this question of service, which, it seems fair to say, was included only by way of make-weight. At all events, the House of Lords so treated it, some of their lordships not even troubling to refer to the point at all.

But adequacy of service was the substantial question in *Tanham* v. *Nicholson* (1872), L.R. 5 H.L. 561; and while the notice-serving landlord succeeded in spite of the absence of provision in the lease, he may well have had a nasty scare. These were the relevant facts; the tenant was aged and *non compos mentis*. The landlord's bailiff called with the notice and gave it to the tenant's daughter. She said that her father was "quite innocent" (meaning by the said words that he was *non compos mentis*). Without reading the paper she placed it on a dresser. Still without having read it, she destroyed it. The premises were a farm and farm-house. The daughter said in cross-examination that she and her two brothers took care of the tenant and managed the farm. Other relevant facts, though not essential facts, were that the brothers saw the notice before its destruction and one told the other that they had got notice to quit.

This lead to an exhaustive examination and exposition of the principles of the law of agency in their application to the service of notices on tenants. It was held that once the landlord established that the person to whom such a notice is handed was the servant of the tenant, the onus is on the latter to rebut the implication that it was that servant's duty to pass the notice on to his master. He must in such a case also prove that the notice did not come to his knowledge at all. What matters is that there should be a duty on the servant; whether it be performed or not is immaterial. Thus, in the case dealt with, the evidence given by the tenant's daughter established the landlord's claim; not only was she the tenant's servant, but she played an important part in the management of the property which was the subject-matter of the document handed to her. Whether she read it, or her co-managers read it, was therefore of no importance.

The above case is very useful to those landlords who have not provided themselves with a power to serve notices by leaving them on the premises. But regard should be had to its limitations; if there had been no evidence that the girl managed the farm, the landlord's position would have been very different. And this evidence was largely provided by the defence!

And, as both cases which I have cited have resulted in victories for the persons serving the notice, and warning may be needed of other dangers, I will now mention *Hogg* v. *Brooks* (1885), 15 Q.B.D. 256, which is an illustration of how not to provide for service. The lease which came under discussion

in that case was for twenty-one years, but contained an option in favour of the landlord to determine it at the end of fourteen years " by delivering to the tenant, his executors, administrators or assigns, six calendar months' notice in writing of his intention to do so." Being desirous of exercising this option, the landlord prepared the necessary notice; but when it came to service he found that the tenant had mortgaged the term by sub-lease, and that it was let to and occupied by the person who ultimately became the defendant in the action; but he could not find the tenant (or his executors or assigns). He served notice on the defendant and sent notice to the last known abode of the tenant, whence it was returned by the postal authorities; he also served the mortgagee; but his claim for possession did not succeed, and bad draftsmanship must bear the blame.

The judgments in *Tanham* v. *Nicholson* (1872), L.R. 5 H.L. 561, undoubtedly clarified the position when there is no express provision for service and a notice has been left with an agent; but there remains the difficulty of establishing the initial fact of agency, which is not always so easily overcome. It may be that some of the older authorities were disposed of or modified: in *Jones d. Griffiths* v. *Marsh* (1791), 4 T.R. 464, for instance, a landlord's notice to quit was served on a maid-servant of the tenant, and its contents were explained to her; but the premises where this took place were not those he was to quit; nevertheless, the judgment includes this passage: " that servant, who was in the power of the defendant, was not called to prove that she did not communicate," etc., and the *ratio decidendi* was that there was ample evidence on which the jury could have presumed that the notice reached the tenant. Then, in *Wilson* v. *Chisholm* (1831), 4 C. & P. 474, notice given by a tenant, left at his landlord's house with a female servant, was held to be ineffective. These two cases can be reconciled only by reference to the verbal explanation accompanying service in the former, and this also would justify the upholding, in *Smith* v. *Clark* (1840), 9 Dowl. 202, of a finding that a notice delivered to a tenant's wife, at the door of the premises demised, had reached him.

The effect of *Tanham* v. *Nicholson* is that one need not trouble about whether the notice reaches the person to be served if one can establish that the person to whom it is handed is under a duty to convey it to that person. It follows that the passage cited from the judgment in *Jones d. Griffiths* v. *Marsh*, *supra*, is no longer valid assuming that it is the duty of a domestic servant to pass such documents on to his master. This would appear to be a safe assumption; but a legal duty must have some foundation recognised by the law; it must spring from contract, from a trust, from status or some other valid title. Agency can be constituted without any contract, so it is not necessary in every case to prove a contractual relationship. Indeed, in *Tanham* v. *Nicholson*, it would hardly seem that their lordships opined that the agency was brought about by contract; the matter was not gone into in detail, but Lord Hatherley, L.C., used the word " duty " which appears in the headnote, and it is clear a duty from the daughter to the father, who was the tenant, is meant. The facts suggest an agency of necessity. But take the case of *Smith* v. *Clark*; would we not still have to establish the fact that a notice delivered to a wife reached her husband? Feminists, who do not all object to the agency for credit-pledging, may well contend that the status does not impose a duty to pass on notices to quit.

It is, therefore, still advisable to insert in leases some express provision for mode of service of any notice which may be provided for. As to the details, all I propose to say is that this is a matter in which Parliament appears to be in advance of conveyancing opinion, and good precedents can be based on such enactments as the Law of Property Act, 1925, s. 196 (3) and (11); the Agricultural Holdings Act, 1923, s. 53, and the Landlord and Tenant Act, 1927, s. 23 (1).

Our County Court Letter.

A QUESTION OF DE-CONTROL.

In *Dugdale* v. *Rogers*, recently heard at Whitchurch County Court, the claim was for possession of a cottage. The plaintiff's case was that her late husband had first employed the defendant in 1916 as a cowman, his wages being £2 a week and the free use and occupation of the cottage by reason of his employment. On the death of her husband, the plaintiff sold the cattle, and verbally terminated the defendant's employment on the 25th March, 1933. As he was an old servant, however, he was permitted to remain, at a rent of 5s. a week, afterwards raised to 7s. The defendant's case was that, in 1916, he received 26s. a week, viz., £1 1s. in money and a cottage worth 5s., and he had paid the latter amount as rent when he obtained a new situation. It was submitted, on his behalf, that the cottage was not reasonably required, and the plaintiff had not had actual physical possession. Two notices to quit had been served, one on the 17th March, 1936, to leave on the 18th April, 1936, and the other on the 6th June to leave on the 11th July. Proceedings before the justices had also been taken, without success. His Honour Judge Samuel, K.C., held that there was never any tenancy between the plaintiff's husband and the defendant, who only had the cottage in consequence of his employment as cowman. The defendant therefore failed in his contention that there was a tenancy from 1916, and also in his contention that the plaintiff had never had physical possession. Even when possession was doubtful, it always followed the title, which was now in the plaintiff. The tenancy, however, was monthly from the 25th March, which meant that the notice to quit was bad. Judgment was therefore given for the defendant, with costs. It is to be noted that, on a proper notice being served, the plaintiff would be entitled to possession in a subsequent action.

THE TITLE TO FORMER COPYHOLDS.

In *Dore* v. *Dix*, recently heard at Chipping Norton County Court, the claim was for possession of a piece of garden ground at Charlbury, £14 8s. mesne profits and £50 damages. The plaintiff's case was that he had bought the land as freehold in two parcels (one in 1896 and the other in 1903), but had been unable to find the deeds. He also owned other adjoining land and cottages thereon, and in 1922 had executed mortgages of some of his properties in Charlbury. The mortgagee had sold the property in 1933 to the defendant, but the plaintiff contended that the land in dispute was not comprised in the mortgage, and that the defendant was therefore not entitled thereto. The question of identity had arisen owing to the fact that the conveyance of 1903 referred to the site of a shop, but there were in fact two shops, one of which was a blacksmith's and the other a wheelwright's, the latter being on the disputed land. The defendant's case was that, having bought the property (as Lot 2) from the mortgagee in 1933, he was offered £40 by the plaintiff, who wished to buy it back. Possession was eventually obtained through the sheriff by means of a writ of possession, and no further claim had been made by the plaintiff until the present action. His Honour Deputy Judge Tudor Rees observed that, although the plaintiff could find the deeds of his other properties, the deeds of the property in dispute were missing. The alleged reason for their absence was a clumsy invention. The main issue could be decided by the defendant's deeds, and their intention was clear. The case would probably never have been started, and trouble and expense would have been avoided, but for the vagueness which appeared inevitable in describing parcels in copyhold property from the deeds and documents. Judgment was given for the defendant, with costs.

Mr. John Warner, retired solicitor, of Stafford, left £25,024, with net personalty £20,236,

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Stamp Duty on Assents.

Sir,—I was not present at the Annual Provincial Meeting, and so am unable to say if there has been any inadvertent omission from your reprint of Mr. David Blank's paper.

As printed in your issue of the 26th inst., the paragraphs dealing with stamp duty appear to be misleading. If a pecuniary legatee, or a spouse (where the estate of an intestate exceeds £1,000 in addition to personal chattels) is willing to accept land in satisfaction, or part satisfaction, of his, or her, legacy or spouse's £1,000, he, or she, may properly be regarded as a purchaser, but where a beneficiary is entitled to part of the residuary estate left upon trust for sale an appropriation by consent is merely an election to accept what the beneficiary is entitled to in another form and no stamp duty is exigible. The same applies to a share of an intestate's estate.

If an assent is expressed to be made in whole or part satisfaction of the assentee's share of the residuary estate, the Inland Revenue will, if the assent is submitted for assessment of duty, mark it as not liable to stamp duty.

Instances were given in a letter from Messrs. Goody, Sons and Weatherall in your issue of the 14th March last.

I believe many conveyancers say that an assent should not show for what reason it is given. Unless, however, it does show this, it would seem that a subsequent purchaser (unless the will as abstracted shows a specific devise to the assentee of the same property) is entitled to ask the grounds for giving the assent, or alternatively to have the document submitted for adjudication. ERNEST I. WATSON.

Norwich.
28th September.

The Solicitors' Practice Rules, 1936.

Sir,—Having for several years worked in an area where undercutting is rampant, I welcomed very cordially the Solicitors' Practice Rules, 1936, and the consequent prospect of at last being able to obtain adequate remuneration for professional work. But the prospect has proved, even before the Rules come into force, to be illusory, for the President of The Law Society, in his presidential address at Nottingham, has carefully and plainly told his fellow practitioners (and the public) that Rule 2 does nothing more than prohibit a solicitor from "holding himself out" as being prepared to do professional business at undercutting rates, and that if Messrs. A. & B. (the notorious firm referred to in the President's comments on "free conveyances") decide to charge their client a special rate—

(*a*) From motives of philanthropy; or

(*b*) Owing to their relationship to their client; or

(*c*) In consideration of the number of transactions involved; or

(*d*) In consideration of the size of the transaction involved; or

(*e*) In consideration of some other special circumstances; then there is to be no objection to their cutting their charges in the same manner as they have done hitherto.

And not being satisfied with enumerating these loopholes, the President goes on to say that "even if it were desirable to prohibit business being done at less than the prevailing scale except in exceptional circumstances it would be difficult if not impossible to define the numerous classes of cases which the exceptions would have to cover."

These exceptions are so numerous and comprehensive that if Messrs. A. & B. cannot bring every transaction within one of them they must be too dull to be able to do much of any business. All that they must *not* do is *to hold themselves out* as being prepared to do professional work at less than the scale adopted by their brother practitioners.

If, therefore, Mr. Brown, a prospective client, walks into their office, instructs them to act for him in the conveyance of Blackacre, and asks no questions about costs, they are at liberty to charge him as little as they like (for no question of "holding out" arises), but if Mr. Brown asks "how much will you do it for?" then (and then only) must Messrs. A. & B. quote the prescribed minimum scale.

If this interpretation of Rule 2 is correct the Rule will surely be still-born, and the profession will once more have succeeded in maintaining itself at the level of respectable hawkers.

Barry. D. LL. JONES.
28th September.

Obituary.

JUDGE MCCLEARY.

His Honour Judge Robert McCleary, Judge of County Courts on Circuit 12, died in a London nursing home on Sunday, 27th September, at the age of sixty-six. He was educated privately and at Trinity Hall, Cambridge, and for a time he was a pupil in a solicitor's office. In 1895 he was called to the Bar by the Middle Temple, and went the Northern Circuit. He was appointed a County Court Judge in 1926. He came to London to do relief work periodically, and he had been sitting at Wandsworth when he was taken ill last week. Judge McCleary was the author of several books on County Court practice.

JUDGE RANDOLPH, K.C.

His Honour Judge Joseph Randolph Randolph, K.C., Judge of County Courts on Circuit 36, and Chairman of the Wiltshire Quarter Sessions, died at his home at Malmesbury on Friday, 25th September, in his sixty-ninth year. Educated at Radley and Magdalen College, Oxford, he was called to the Bar by the Inner Temple in 1892, and took silk in 1913. He was appointed Judge of County Courts on Circuit 14 in 1921, and in 1924 he was transferred to Circuit 36. He was appointed Chairman of Wiltshire Quarter Sessions in the same year.

MR. R. S. RODGER.

Mr. Robert Stuart Rodger, Barrister-at-law, died in a Manchester nursing home on Sunday, 20th September. Mr. Rodger graduated in medicine at Edinburgh University, and in 1920 he was called to the Bar by Gray's Inn. He was appointed Coroner for the Salford Hundred area of the County of Lancaster in 1922.

MR. T. O. JACKSON.

Mr. Thomas Ormandy Jackson, solicitor, senior partner in the firm of Messrs. T. O. & J. K. Jackson, of Kendal and Milnthorpe, died on Sunday, 27th September, at the age of seventy-seven. Mr. Jackson, who was admitted a solicitor in 1882, practised at Milnthorpe until 1929 when he took his son, Mr. J. K. Jackson, into partnership and opened another office at Kendal.

Reviews.

Chalmers' and Asquith's Outlines of Constitutional Law. By DALZELL CHALMERS, B.A., Barrister-at-Law, and the Hon. CYRIL ASQUITH, M.A., Barrister-at-Law. Fifth Edition, 1936. By CYRIL ASQUITH, K.C. Demy 8vo. pp. xxxi and (with Index), 528. London: Sweet and Maxwell, Limited. 15s. net.

A new edition of this standard work is very welcome, and the fact that it has reached its fifth recension is cogent evidence that it has been found to satisfy the requirements of those entering upon the fascinating study of the constitutional

development of our country. Well written, and with an occasional lightness of touch where the particular subject offers itself to such treatment, it further commends itself to the student. For example, under the rubric "Archbishop of Canterbury," we are told that this august ecclesiastical dignitary "can grant Lambeth degrees, and does so now and then, to persons of eminent piety but moderate scholastic attainment," and in the chapter on "The Royal Prerogative," we are reminded that "whales and sturgeon are royal fish . . . The King is entitled, it is said, to the whale's head and the Queen to its tail." The outstanding features of this edition, however, are, first, the much fuller treatment, admirably carried out, of the history and development of the courts of law, and, secondly, the elaborate examination in Pt. VI of the constitution of British Dominions, Colonies, Possessions and Protectorates, and their relation to the mother country; and the separate chapter on India, for as is aptly said in the preface, "since three out of four British subjects are Indians, the system of Government in India deserves and has been given, a chapter to itself." Then follows a discussion of the scope of the Statute of Westminster, 1931, the importance of which cannot be too strongly stressed. Students will find this helpful. In these and in other respects the work has been kept abreast of recent developments, but we have noted a few instances where statements have been carried forward from previous editions which are now out of date, or are inaccurate, and we call attention to them so that they may be corrected in further reissues. Under the heading, "Irish Peers" no notice is taken of the fact that since the abolition of the Irish Chancellorship no machinery is available for filling vacancies in the ranks of the representative peers, with the consequence that ere long the Irish nobility will be unrepresented in the House of Lords unless, which is unlikely, some step is taken to alter the present position. Again, "Revising Barristers" are, on p. 125, included in the list of those who are disqualified for membership of the House of Commons, but those functionaries were abolished many years ago, and, much to their indignation, without a penny of compensation. Further, it is not correct to say, as is stated on p. 261, that the Court of Criminal Appeal "consists of the Lord Chief Justice and eight judges of the King's Bench Division." That was so under the original Act constituting the court, but by a later statute all the King's Bench judges were made members of the court. The references to some of the cases cited also call for correction. On p. 108, by a transposition of the figures, the printer has post-dated *Darnell's Case* by forty-five years; *Baron de Bode's Case* and *Houlden* v. *Smith* are cited in the text as in "Q.B.D.," instead of "Q.B." The index, as an index should be, is full, but possibly some cynic, with memories of recent happenings in the House of Commons, may demur to the literal accuracy of the entry: "Idiot cannot sit in Parliament."

Books Received.

Principles of the Law of Partnership. By Sir Arthur Underwood, M.A., LL.D., one of the Conveyancing Counsel of the High Court of Justice. Fifth Edition, 1936, by Milner Holland, B.C.L., M.A., of the Inner Temple, Barrister-at-Law. Demy 8vo. pp. xxviii and (with Index) 207. London: Butterworth & Co. (Publishers) Ltd. 8s. 6d. net.

The Conveyancer and Property Lawyer. No. 1. September, 1936. London: Sweet & Maxwell, Ltd. 6s. net.

Table for Grossing up Net Dividends. London: Fredc. C. Mathieson & Sons. 1s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

To-day and Yesterday.

Legal Calendar.

28 September.—It was a bad day for everyone concerned when Miss Augusta Slade, the romantic daughter of an English admiral, fell a victim to the exotic charms of Constantine Theodorides, a young Greek whom she met while travelling with her mother in Turkey in 1869, and to whom she became secretly engaged. In 1875 the engagement was broken off and the false lover, changing his style, tried to make the lady buy back her love letters to him for some hundreds of pounds, hinting alarmingly at publication. This injudicious step led him eventually to the Old Bailey where, on the 28th September, 1877, Mr. Justice Hawkins awarded him seven years' penal servitude.

29 September.—On the 29th September, 1309, William de Bourne was appointed a Justice of the Common Pleas, where he did service for several years, varying his work with assizes, especially in the western counties and with special commissions. Thus he is found trying the persons who conspired to bring a false appeal of robbery against John de Treiagu, enquiring into the transgressions alleged against the taxors of Devon, perambulating the forests of Devon and appointed to try certain offences in Guernsey.

30 September.—On the 30th September, 1915, Sir George Farwell, formerly a Lord Justice of the Court of Appeal, died at his home in Somerset.

1 October.—On the 1st October, 1500, John Alcock, Bishop of Ely, "was translated from this to another life." He had been the first Lord Chancellor of Henry VII's reign, and to him primarily fell the decision of several difficult constitutional points which had to be dealt with on the accession of the Welsh usurper. Could the peers included in an Act of Attainder of Richard III's time take their seats in the House of Lords at the beginning of the session? The judges consulted by the Chancellor held that they could not. Could the new king, himself attainted, give the royal assent to an Act reversing his own outlawry? It was held that he could.

2 October.—Scotland Yard is built on an unsolved murder mystery. On the 2nd October, 1888, work was in progress on the foundations, when a carpenter found a neat parcel in a cellar. It was opened and found to contain the decomposing trunk of a well-built woman wrapped in a black petticoat. Workmen had constantly passed the spot and the remains could not have been there for more than two or three days. Whoever left them must have scaled an 8-foot hoarding. All the talent of the Metropolitan Police was never able to unravel this mystery.

3 October.—The latest ideas on law reform in 1866 were discussed by Lord Brougham in his presidential address at the tenth annual Social Science Congress in the Assize Court at Manchester on the 3rd October. In Denmark the experiment of courts of reconcilement had met with great success, 29,000 out of 30,000 suits having been settled without being brought to trial. His lordship considered that in criminal trials the accused should be allowed to give evidence at his option, and also that the examination of parties in civil suits should be extended to the divorce courts. For the county courts he had only praise. In the previous year they had dealt with 782,849 plaints involving £1,847,000.

4 October.—His zeal as counsel for the prosecution in the trial of the Seven Bishops won for Sir Robert Baldock a place as a Justice of the King's Bench, filling the post of a judge dismissed for declaring his opinion in favour of the accused. His tenure of office, however, was short, for before the next law term James II was in flight and William of Orange on his way to England. Baldock, of course, lost his place. He died on the 4th October, 1691.

THE WEEK'S PERSONALITY.

Few will contest that Lord Justice Farwell stands among the greatest equity judges who have strengthened the Court of Appeal. Yet though he belonged to the old-fashioned Chancery order, his practice and training having been exclusively in the Courts of Equity, his mind had a wide judicial scope, besides a masculine grasp of principle and a relentless reliance on grim logic. From the moment of his elevation to the Bench it became clear that he was not only capable and learned, but possessed of a rare power of thinking for himself outside accepted grooves. He was one of the strongest judges of his time, and his judgments couched in graceful and virile English displayed a fine judicial temper and a marked independence of thought. It was once said of him that "there was always something of the country squire about him, but nothing of his narrowness." His memory will always be linked with his decision in the great *Taff Vale Case*, which, after being reversed by the Court of Appeal, was restored by the House of Lords with eulogies not often accorded by that tribunal. The memory of his great qualities will live as long as the courts in which he served.

BIG BEN AND ITS DESIGNER.

The explosive spirit of the late Lord Grimthorpe, Q.C., designer of Big Ben, must have raged when certain painters working behind the dial of his masterpiece inadvertently stopped it the other day by resting a ladder against the spindle carrying the hands. The quarrelsome, versatile and high-handed leader of the Parliamentary Bar was described by one who knew him as "an Alpine peak . . . which resembled Hecla, for although he had a clear, cool head, he had a burning heart and was continually in eruption of lava and scoriæ." His versatility made him dictatorial on every subject—architecture, mechanics, astronomy, church discipline. Whatever he did, he did with all his might, often botching the performance. He assisted in making the will of his friend Dent, the clockmaker who made Big Ben (and whose successors set it right after the painters had stopped it). The will was disputed and set aside, and shortly afterwards he was cross-examining, in a manner which could frighten a timid witness into fits, a particularly omniscient expert. "Is there anything you don't know about?" he asked sarcastically. "Yes," was the reply, "I don't know anything about clocks or wills."

NEW WORK AT THE OLD BAILEY.

The opening of the Sessions at the Old Bailey after the Long Vacation found it improved to the tune of £12,000. Opinions vary as to the beauty and appropriateness of Edward Mountford's rather ponderously cheerful Edwardian conception of a criminal court, but there can be no doubt that it is more healthy and commodious than its predecessors. It was in 1767, twelve years after a committee had been appointed to consider the erection of a new gaol, and seventeen years after the great scare when two judges caught gaol fever and died, that the City made its first great effort for the Old Bailey, deciding to spend £50,000. By 1772, precautions against infection had been carried to the point of a new ventilator and a contrivance "made by a pipe to carry the fumes of vinegar into the sessions house while the court is sitting." By 1774, the new sessions house was ready, complete with the luxury of "a large room appropriated for the use of witnesses to prevent their standing in the yard exposed to the inclemency of the weather, or being at public houses, and they are sent for when wanted to give evidence."

A portrait of the late Judge H. Tindal Atkinson, formerly County Court Judge for Essex, which was presented to the Southend Corporation by his son, Sir Edward Tindal Atkinson, now Director of Public Prosecutions, has been hung in the Southend Police Court.

Notes of Cases.

Court of Appeal.

Marchant *v.* Ford and Others.

Greer, Slesser and Scott, L.JJ. 27th and 28th July, 1936.

PRACTICE—ACTION FOR LIBEL—BOOK—ILLUSTRATED ADVERTISING WRAPPER—PRINTERS OF WRAPPER MADE DEFENDANTS WHETHER CLAIM AGAINST THEM SHOULD BE STRUCK OUT—"ASSISTING TO PUBLISH"—R.S.C. Ord. XXV, rr. 2, 4.

Appeal from a decision of Greaves-Lord, J.

In a book by the first defendant, the principal character became successively the mistress of two men, and her father was shown as unsympathetic and brutal in character. The wrapper showed the woman scantily clad, together with her second lover, and on it were the words: "'Anne Craft' is no fancy title, but the name of a surprising personality . . ." The plaintiff, believing that he and his daughter were the characters drawn in the book, brought an action for libel against the author, publishers and printers. He also made defendants the firm who printed the wrapper, alleging that they "assisted falsely and maliciously to publish of the plaintiff" the passages complained of. These defendants admitted publishing the wrapper, but denied the other allegations, and applied for the statement of claim so far as it referred to them to be struck out as disclosing no reasonable cause of action, and being frivolous and vexatious under Ord. XXV, r. 4. Alternatively, they asked that the point of law raised by the allegation that they assisted to publish the libel should be set down and disposed of under r. 2, before the trial of the issues of fact. Greaves-Lord, J., ordered that the statement of claim so far as it referred to those defendants should be struck out, and that the action against them should be stayed.

GREER, L.J., allowing the plaintiff's appeal, said the allegation of assisting in publication was the same as an allegation of publication. The court would not now decide what must be decided at the trial, whether the words on the wrapper were an invitation to read the book, justifying the *primâ facie* conclusion that their printer was a party to the publication of the work, but the learned judge took on himself to decide what could only be decided when the whole evidence was before the court. The plaintiff might have evidence that these defendants knew what was inside the book, or he might succeed, though he was unable to prove this. The judge was wrong in striking out the statement of claim.

SLESSER, L.J. agreed.

SCOTT, L.J., agreed, and also said that Ord. XXV, r. 2, enabling a point of law to be raised separately, was inappropriate to a case of this sort.

COUNSEL: *Theobald Mathew; Murphy*, K.C., and *The Hon. Ewen Montagu.*

SOLICITORS: *Theodore Goddard & Co.; Oswald Hickson, Collier & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Turner's Will Trusts; District Bank Limited *v.* Turner.

Lord Wright, M.R., Romer and Greene, L.JJ.
30th June, 1st and 30th July, 1936.

WILL—TRUST—DIRECTION TO ACCUMULATE—CONTINGENT INTEREST — INTERMEDIATE INCOME BEFORE VESTING — DESTINATION—TRUSTEE ACT, 1925 (15 & 16 Geo. 5, c. 19), ss. 31, 69 (2).

Appeal from a decision of Bennett, J.

A testator, who died in December, 1931, gave one fifth part of his residuary estate to such of the children of his late son as should be living at the date of his death and should then have attained or thereafter should attain the age of twenty-eight years. The will also provided: "I declare that my trustees

may apply the whole or such part as they in their discretion shall think fit of the income of the expectant or presumptive shares of any grandchild of mine in my residuary estate under the trusts hereinbefore contained for or towards his or her maintenance, education or benefit during such time as such grandchild shall be under the age of twenty-eight years . . . and shall during the suspense of absolute vesting of any such share accumulate the surplus, if any, of the income thereof at compound interest by investing the same and the resulting income . . . in augmentation and so as to follow the destination of the share from which the same shall have proceeded, but with power to apply any such accumulations in any subsequent year for or towards the maintenance, education or benefit of the grandchild for the time being presumptively entitled as aforesaid in the same manner as such accumulations might have been applied had they been income arising from the original share in the then current year." Three of these grandchildren survived the testator, and two attained twenty-eight before the date of this action. The third attained twenty-one in August, 1931, but died in November, 1934, intestate and a bachelor. At that time the trustees had accumulated income in respect of his share amounting to £3,000. Bennett, J., held that the accumulations formed part of his estate, on the ground that under s. 31 of the Trustee Act, 1925, he had been entitled to receive the income.

ROMER, L.J., allowing the appeal, referred to *In re Spencer* [1935] Ch. 533 and *In re Ricarde-Seaver* [1936] W.N. 146, and said that the Trustee Act, 1925, was a consolidating Act, and it was extremely unlikely that it changed pre-existing law. His lordship considered the Conveyancing Act, 1881, s. 43, the Law of Property Act, 1922, s. 88, and the Law of Property (Amendment) Act, 1924, s. 5, and the Fifth Schedule, and said that it was incredible that s. 31 (1) of the Trustee Act, 1925, was intended to change the law still further so as to over-ride the provisions of the instrument creating the trust. If possible s. 69 (2) of the Act should be so construed as to make it consonant with s. 88 (6) of the Act of 1922. It was possible to do so. The fact that s. 31 contained powers which were directory was immaterial. The totality of the provisions in the section was one of the "powers conferred by this Act" within s. 69 (2), and, therefore, only applied if and so far as a contrary intention was not expressed in the instrument creating the trust and had effect subject to the terms of that instrument. Therefore, the accumulations of the income made by the trustees did not form part of this grandson's estate but accrued by way of addition to the shares of the other grandchildren in the testator's residuary estate.

COUNSEL: *Vaisey*, K.C., and *E. Errington*; *Cleveland-Stevens*, K.C., and *C. R. Romer*; *Timins*; *J. Stamp*.

SOLICITORS: *Winter & Co.*, agents for *Jackson & Co.*, of *Rochdale*; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Andreae *v.* Selfridge & Co. Ltd.

Bennett, J.

14th, 15th, 16th, 17th, 21st, 22nd, 23rd, 24th and 28th July, 1936.

NUISANCE—BUILDING OPERATIONS—LARGE BUILDING ON ISLAND SITE—MODERN METHODS—NOISE—RIGHTS OF LESSEE.

The plaintiff was tenant of two houses in Wigmore Street, London, where she carried on an hotel business, holding under two leases. The first, for a term of twenty years from the 25th December, 1921, was expressed to be subject "to all rights and easements appertaining to any of the adjacent property and to the alteration or rebuilding thereof without any claim by the lessees for compensation for injury upon such plans and elevations" as the lessor might determine. The second lease was a reversionary lease extending the term granted for a further ten years. The premises stood on the western part of an island site, that part belonging to the Portman settled estates and in 1928 the tenant for life entered into a building agreement with the defendants whereby they were to become entitled to the grant of a lease so soon as £40,936 was paid by them and when they had caused the existing leases, sub-leases and agreements affecting the land to be surrendered and had erected upon the land certain specified buildings. It was further agreed that upon payment of the sum the defendants were to take possession of the land, becoming entitled to the rents and to the benefit of all other rights reserved by existing leases and being able to give notices to quit and to determine the leases as they thought fit. (At all material times the defendants had not acquired all the outstanding leasehold interests and, therefore, in respect of that part of the property of which they had acquired the leases, they were in the position of licensees.) The defendants also entered into a building agreement with the owners of the other part of the island site which comprised about three and a half acres. In 1931 the plaintiff agreed to sell to the defendants the houses in question for the residue of the term of the leases for £14,750, the defendants paying £4,750 on the execution of the agreement and agreeing to pay the rest on the 29th September, 1936. It was agreed that till then the plaintiff should continue as tenant of the defendants upon the terms and conditions contained in the lease, being at liberty to underlet the premises for the purpose of an hotel, business premises or a social club. Early in 1932 the defendants proceeded with building operations in the south-east corner of the site, excavating down to fifty or sixty feet, covering the floor with concrete, building concrete retaining walls and erecting a steel framework which they riveted together. The work which was carried out between 25 and 100 yards from the plaintiff's premises involved the use of petrol engines for excavation, cranes and mechanical concrete mixers. The court held that the incessant noise created interfered with the physical comfort of ordinary normal people. The work continued till early in 1933. In July, 1935, the defendants began demolitions in Somerset Street and Orchard Street causing dust, grit and noise by reason of the falling of masonry and the use of pneumatic hammers. The plaintiff claimed damages alleging that by reason of the work her guests had been driven away and the court held that she had in fact suffered damage.

BENNETT, J., in giving judgment, said that the defendants had argued that they were carrying on works of demolition and re-building of a temporary nature and that if they employed methods as good as those generally employed by skilful firms in carrying out similar works in this country, and if they used reasonable skill and care, the plaintiff had no remedy (see *Stump* v. *Bywater & Sons, Ltd.*, "The Builder," 20th July, 1907, p. 91; and *Harrison* v. *Southwark & Vauxhall Water Co.* [1891] 2 Ch. 409). There was no reason to suppose that the defendants had not used their machines skilfully, but they claimed to be entitled to make whatever was necessary in the way of noise to carry out the work speedily and save themselves money. However, the law to-day stood as it was laid down in *Bamford* v. *Turnley*, 3 B. & S. 66, at pp. 82 and 83. On the principle there stated you could except from the general rule *sic utere tuo ut alienum non laedas* the acts of the defendants in *Stump* v. *Bywater* and in *Harrison's Case*. But what the present defendants did was not commonly done in the ordinary use and occupation of land or houses. It was not usual or common in this country to excavate a site to the depth of sixty feet, and erect on it a steel framework fastened with rivets, nor was it a common or ordinary use of land to demolish five or six houses using pneumatic hammers. Such acts might be convenient, but if you built and demolished in that way, causing your neighbour pecuniary loss it was fair that you should compensate him. On the principle *sic*

utere tuo ut alienum non laedas the defendants were answerable for the plaintiff's loss and she was entitled to recover £4,500. It had been further argued that under the terms of her lease the plaintiff had to put up with any injury she might sustain by the re-building or alteration of the adjacent property. This had no application to the re-building operations in 1932 in the south-east corner, but only referred to the re-building on the adjacent property of the Portman Estates and might extend to all the properties affected by the second operations in 1935. But when the lease was granted it would not have been possible to pass on the island site from the Portman property in Wigmore Street to the Portman property in Somerset Street without passing over the property of someone else. The property in Somerset Street was not, therefore, "adjacent" within the meaning of the lease. The property in Orchard Street might be adjacent, but the provision in the lease was never intended to give the landlord freedom to do what he pleased in the way of causing a nuisance to his lessee by re-building or altering his adjacent property. On its true construction the demise was subject to all rights and easements appertaining to the adjacent Portman property as it stood when the lease was granted or which the adjacent property might have when the buildings on it had been altered or re-built in accordance with the plans and elevations determined by the lessor or his successors. The provision afforded no answer to the plaintiff's claim in respect of nuisance. There must be judgment for the plaintiff.

COUNSEL: *Vaisey*, K.C., and *Tillard*; *Morton*, K.C., and *R. W. Turnbull*.

SOLICITORS: *Boyce, Evans & Sheppard*; *Jaques & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Ward *v.* Tibbatts.

Singleton, J. 16th June, 1936.

LIMITATION—ALLEGED LOAN—ACTION BROUGHT AFTER TWELVE YEARS—CORRESPONDENCE BETWEEN PARTIES WITHIN SIX YEARS BEFORE ACTION—TERMS OF LETTER—SPECIFIC DEBT—WHETHER SUFFICIENT ACKNOWLEDGMENT OF.

Action to recover money alleged to have been lent.

The plaintiff alleged that he had by various advances lent the defendant £996 in 1922 and 1923. The defendant to an action brought to recover the money in 1935 pleaded, *inter alia*, the Statute of Limitations, but also denied indebtedness or that the plaintiff had made him the alleged loan. In September, 1929, the plaintiff's wife wrote the defendant's wife a letter containing, *inter alia*, the sentence: " . . . may Charlie and I please have back the money we lent you and Jack?" In October, 1929, the defendant, as a result of that letter, wrote to the plaintiff a letter containing, *inter alia*, the following words: " . . . I cannot agree with Lena's inference that money was loaned to Aileen or to me. The cash I received from you was to enable me to accept the 'partnership' arrangement . . . I . . . am . . . not in a position to make any definite promises. You may be assured that, immediately I am able to, I shall commence reducing my obligation . . . until the whole amount is disposed of . . ."

SINGLETON, J., said that the plaintiff relied on that letter as defeating the defendant's plea of the Statute of Limitations. Counsel for both parties had said that the law on the matter was to be found in *Spencer* v. *Hemmerde* [1922] 2 A.C. 507. In that case a letter had been written containing the following words: "It is not that I won't pay you, but that I can't do so . . . What I wrote was not that I saw no prospect at present of being able to repay the capital, but that I saw no prospect of being able to repay the capital at present." It was held that that letter was a sufficient acknowledgment to take the case out of the statute. [His lordship then referred to the speech of Viscount Cave [1922] 2 A.C. at pp. 512, 513, to that of Lord Sumner at p. 532, and to the concluding paragraph of the latter speech, at p. 536.] Applying the passages he had read to the case before him, the plaintiff had, in his (his lordship's) opinion, to prove (1) the debt, and (2) the acknowledgment of it. The defendant's letter of October, 1929, was in answer to that of the plaintiff's wife, which letter, however, did not mention any specific debt or sum of money, the words used being, "the money we lent you and Jack." He (his lordship) found it difficult to say from the correspondence that there was an acknowledgment of *the* debt. There was no admission of any money owing. On the contrary, there was an express denial. The defendant's letter was no more than an admission of fact of a partnership agreement, and that there might be something due from the defendant to the plaintiff, and that there might be a moral obligation to pay. He (his lordship) could not see that there was an acknowledgment of this debt. He was therefore bound to hold that the Statute of Limitations afforded the defendant a good defence, and there must be judgment in his favour.

COUNSEL: *J. A. Bell*, for the plaintiff; *I. B. Lloyd*, for the defendant.

SOLICITORS: *Meaby & Co.*; *Hughes, Hooker & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Arran *v.* Walters.

Horridge, J. 24th June, 1936.

METROPOLIS—EMPLOYMENT AGENCY—LICENCE ISSUED IN RESPECT OF ITS OFFICE—CONTRACT INITIATED AT OFFICE—SUBSEQUENT SIGNATURE AT OFFICE FOR WHICH NO LICENCE EXISTING—EFFECT ON CONTRACT.

Action for commission alleged to be due on a contract of employment.

A limited company, carrying on the business of an employment agency, in March, 1934, entered into a contract with the defendant, whereby the latter agreed to pay the company certain commission in consideration of the company's having procured an engagement for him and his band. The company were duly licensed by the London County Council, the licence being in respect of the company's place of business in Dean Street, London. The negotiations for the agreement were begun in the Dean Street office, where the defendant came in order to obtain an engagement. The negotiations continued in the form of discussions at various places other than the Dean Street office, and the agreement was ultimately signed at an office in Lisle Street, in respect of which there was no licence to carry on an employment agency. The defendant duly secured an engagement through the company, but a dispute subsequently arose between the parties with regard to the amount of commission payable. It was contended, *inter alia*, by the defendant that the agreement was not enforceable by the company as it had been signed at premises for which there was no licence to carry on an employment agency. It was contended for the plaintiff that the principle laid down in *Kirkwood* v. *Gadd* [1910] A.C. 422 applied in his favour. The company's rights under the agreement with the defendant had passed to the present plaintiff by assignment.

HORRIDGE, J., having found in favour of the plaintiff with regard to his claim for commission said that, in his opinion, the fact that the agreement was signed at Lisle Street did not mean that the company was not carrying on business at Dean Street. The signature of the contract was an incident of the transaction which happened to take place at Lisle Street. The real transaction had been initiated and carried out at Dean Street, in respect of which the company were duly licensed. The defendant was not entitled to succeed on that point, and there must be judgment for the plaintiff.

COUNSEL: *Cartwright Sharp*, K.C., and *K. Groves* for the plaintiff; *C. J. A. Doughty* for the defendant.

SOLICITORS: *Arram, Fairfield & Co.*; *Hall, Brydon & Chapman.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Westminster Bank Ltd. *v.* Imperial Airways Ltd.

Lewis, J. 30th June, 1936.

CARRIAGE OF GOODS—AIR—CONTRACT OF INTERNATIONAL CARRIAGE—CARRIER'S LIABILITY—CONSIGNMENT NOTE REQUIRED TO STATE THAT CONTRACT SUBJECT TO CONVENTION LIMITING—STATEMENT IN NOTE THAT CONTRACT BASED ON GENERAL CONDITIONS—CONDITIONS BASED ON CONVENTION—WHETHER STATEMENT SUFFICIENT—GOODS STOLEN AFTER DELIVERY AT AERODROME—WHETHER CARRIAGE BEGUN—CARRIAGE BY AIR ACT, 1932 (22 & 23 Geo. 5, c. 36), s. 1, Sched. I, Arts. VIII, XXII.

Action for damages for alleged negligence in the carriage of a consignment of gold entrusted by the plaintiffs to the defendants.

On the 5th March, 1935, the plaintiffs by their agents delivered to the defendants for reward in London a box containing three bars of gold, their property, to be carried by the defendants from London to Paris on the terms of a consignment note of that date. The value of the consignment was £9,228. The defendants failed to deliver the box. The gold was stolen from a strong-room at Croydon in spite of the defendants' precautions. An order was made that, before the trial of the action, certain issues should be decided by the court, the first of which was: whether the consignment note satisfied the requirements of Art. VIII (q) of the Convention set out in the 1st Sched. to the Carriage of Goods by Air Act, 1932. By that article, "the air consignment note shall contain the following particulars:— . . . (q) A statement that the carriage is subject to the rules relating to liability established by this Convention." Article XXII imposed a limit on the liability of a carrier on a contract of carriage coming within the Act. The plaintiffs contended that the consignment note was subject to the Carriage by Air Act, 1932, and contained no statement that the carriage was subject to the rules relating to liability established by the Convention set out in the 1st Sched. to the Act as required by Art. VIII (q). The defendants contended that they were not common carriers and that it was a condition of the contract that they did not accept the liability of common carriers; that the contract was subject to the defendants' general conditions, which provided, *inter alia*, that the liability of the defendants, if any, was limited to 250 French francs per kilogram (Art. XXII (2) of the Act). The defendants admitted that the contract was subject to the Act of 1932, and contended that its terms satisfied Art. VIII of the Convention set out in the 1st Sched. to the Act. The plaintiffs now sued for the value of the lost gold. *Cur. adv. vult.*

LEWIS, J., said that, for the purposes of this case, the effect of the Act of 1932 was to give the force of law to the Warsaw Convention in relation to this contract, which, it was conceded, was one for international carriage (Art. 1 (2)). It had been suggested that the damage sustained by the plaintiffs did not take place during the carriage by air. The defendants had, however, admitted that the goods were in their charge when stolen. It was accordingly impossible to contend successfully that the carriage by air had not begun at the time of the loss. Article IX provided that if the carrier accepted goods without an air consignment note having been made out containing, *inter alia*, the statement required by Art. VIII (q), he should not be entitled to avail himself of the provisions of the Act excluding or limiting his liability. The only reference to the Act in fact contained in the consignment note was a statement that the general conditions were based on the Convention of Warsaw in so far as concerned international carriage. In his opinion, a statement that the carriage was subject to certain general conditions which were based on the Convention was not a statement that the carriage was subject to the rules relating to liability established by the Convention. The statement on the consignment note accordingly did not comply with the statutory obligation, and the defendants were not entitled to the advantage of limitation of liability conferred by the Convention. He thought that the defendants had no defence to the plaintiffs' claim, and there must be judgment in the plaintiffs' favour for £9,138 13s. 5d., the agreed value to them of the gold.

COUNSEL: *Willink*, K.C., and *W. L. McNair*, for the plaintiffs; *Miller*, K.C., and *H. G. Robertson*, for the defendants.

SOLICITORS: *W. A. Crump & Son; Beaumont & Son.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Prosser *v.* Richings & Another.

Lord Hewart, C.J., Talbot and Goddard, JJ.
21st July, 1936.

ROAD TRAFFIC—HEAVY MOTOR VEHICLE—MAXIMUM WEIGHT PERMITTED TO BE TRANSMITTED TO ROAD—EXCESS WEIGHT REGISTERED BY MACHINES—WHETHER INSPECTOR REQUIRED TO PROVE THAT METHOD OF WEIGHING SATISFACTORY—MOTOR VEHICLES (CONSTRUCTION AND USE) REGULATIONS, 1931 (S.R. & O., 1931, No. 4), Art. 59.

Case stated by Gloucester justices.

An information was preferred by the appellant, Prosser, an Inspector of Weights and Measures, against the respondents for that, on the 16th December, 1935, they permitted to be used on a road a four-wheeled heavy motor vehicle which was then so laden that the sum of the weights transmitted to the road surface by the two rear wheels in line transversely exceeded 8 tons, contrary to Art. 59 of the Motor Vehicles (Construction and Use) Regulations, 1931. On the day in question, the appellant was on the road with correct weighing instruments. The respondents' vehicle was on the off-side of the road, stationary, in neutral, and with the brakes off. The appellant weighed the vehicle with his machines on the spot, one weighing instrument being placed under each wheel simultaneously. The weight recorded was 4 tons 7 cwts. for the off-side wheel, and 4 tons 9 cwt. 2 qrs. for the near-side wheel, making a total excess of 16 cwt. 2 qrs. over the maximum 8 tons allowed by the regulations. The unladen weight of the vehicle was just under 5 tons, and it was carrying 7 tons of flaked maize in sacks. It was properly loaded in the only safe manner possible. It was contended for the appellant that an offence had been committed against the regulations. It was contended for the respondents that the load was not excessive and that the vehicle was properly loaded. The justices were of opinion that the burden was on the appellant to show that the method of weighing was satisfactory, and that he had failed to discharge the burden because (1) owing to the camber of the road, the two wheels would necessarily show different weights; (2) there was no evidence that the front wheels were standing on the same level as the rear wheels, or that the weight of the vehicle was not being thrown on to the rear wheels. The justices also held, although the driver of the vehicle at the material time was in the respondents' employ, that there was no evidence that they permitted the alleged offence. They accordingly dismissed the informations.

LORD HEWART, C.J., said that, in his opinion, the regulation in question was an absolute prohibition. It contained no provision with reference to the particular circumstances of any given highway, such as camber or gradient. Those conditions were really irrelevant. If it were otherwise, the regulation might be rendered futile, because it would be difficult to find a place which was precisely level, and idle to say that only in such a place would excessive weight do harm. In his opinion, too, the true conclusion from the facts was that

the employers, having put the driver in a position to do those acts, and having accepted that load to be carried, could not be heard to say that they had not permitted the vehicle to be so used. The appeal would be allowed, and the case must go back to the justices with a direction to find the offence charged proved.

TALBOT and GODDARD, JJ., agreed.

COUNSEL: *R. C. Hutton*, for the appellant. There was no appearance by or on behalf of the respondents.

SOLICITORS: *Field, Roscoe & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

English *v.* **Bloom and the London Passenger Transport Board; Siegenberg** *v.* **Same (Consolidated).**

Singleton, J. 21st and 22nd July, 1936.

PROCEDURE—COSTS—SEPARATE PLAINTIFFS INJURED IN SAME ACCIDENT—SEPARATE WRITS ISSUED AGAINST SAME DEFENDANTS—DISCRETION OF PLAINTIFFS' SOLICITOR—SUBSEQUENT CONSOLIDATION—PAYMENT INTO COURT—RECOVERY BY ONE PLAINTIFF OF MORE AND BY THE OTHER OF LESS THAN AMOUNTS PAID IN TO MEET RESPECTIVE CLAIMS—FORM OF ORDER FOR COSTS.

In March, 1936, while the plaintiffs were passengers in a taxicab owned by the defendant Bloom, the cab became caught between two tramcars owned by the defendants, the L.P.T.B. The plaintiffs received personal injuries in the accident, for which they sued the defendants. The solicitor acting for both plaintiffs issued separate writs and delivered separate statements of claim in May, 1936. A separate defence was delivered in each action in June. On the 16th of that month, on the summons for directions, the two actions were consolidated. On the 6th July, the defendants paid into court £225 in respect of English's claim and £125 in respect of that of Siegenberg. At the trial on the 21st, Singleton, J., awarded the former £200 and the latter £185. It was submitted on behalf of the defendants that the plaintiffs ought from the start to have proceeded by one action and not by two. The question of costs was adjourned until the following day.

SINGLETON, J., said that the circumstances were a little unusual. He saw no reason why two writs should not have been issued. That must be left to the discretion of the solicitor, who, in this instance, was acting for both plaintiffs. Separate writs would be more convenient in a case, for example, where one plaintiff had put the solicitor in funds and the other had not. Counsel for both sides had informed him (his lordship) that they had been unable to find any authority in point on the question of costs in such a case. He had to bear in mind (1) that the successful plaintiff who had recovered more than had been paid into court on account of his claim should not in any way be prejudiced by the position of the plaintiff who had recovered less than had been paid in in respect of his claim; and (2) that the defendants should have the benefit of having in the case of English paid in more than he recovered. In his opinion, the proper order was as follows: Judgment for the plaintiff Siegenberg for £185 and costs, including the costs of the consolidated action, except in so far as directly attributable to the claim of the plaintiff English, after the date of payment in. Order for payment out to Siegenberg of the £125 in court, as part satisfaction. Judgment for English for £200 and costs up to the date of payment in. English to pay the defendants any costs of the consolidated action arising after the date of payment in, which were directly attributable to his being a party to the consolidated action. Order for payment out to the defendants of £25, part of the £225 paid into court by them in respect of English. Order for payment out to English of £180, the remainder of the sum in court to be dealt with according to the Taxing Master's certificate.

COUNSEL: *F. W. Wallace*, for the plaintiffs; *Ernest Hancock*, for the defendants.

SOLICITORS: *S. Rutter & Co.; Langford, Borrowdale and Thain.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Tolnay and Another *v.* **Criterion Film Productions Ltd.**

Goddard, J. 28th and 30th July, 1936.

CONTRACT—AUTHORS ENGAGED TO PRODUCE SCREEN PLAY—COLLATERAL UNDERTAKING TO EXHIBIT THEIR NAMES ON SCREEN—REFUSAL TO ACCEPT PLAY—CLAIM—AUTHORS' COLLATERAL CLAIM FOR LOSS OF PUBLICITY—VALIDITY.

Action for damages for breach of contract.

The plaintiffs agreed to produce for the defendant company a certain screen play, which was the adaptation of a novel. It was also agreed in a separate letter that the defendants would give the plaintiffs screen credit by having their names exhibited on the screen as joint authors of the work. Circumstances having occurred as a result of which the plaintiffs alleged breach by the defendants of both contracts, they brought this action for damages.

GODDARD, J., having found in favour of the plaintiffs with regard to the alleged breach of the chief contract, said that the claim for loss of publicity based on the collateral contract contained in the letter had given him a great deal of difficulty. It seemed to him that the same principles must apply in the case of the author of a play as applied to an actor or an actress in a play. As he understood the authorities, it had been held by the Court of Appeal, and approved in the House of Lords, that if a manager undertook to allow an artiste to appear on the stage and then broke his undertaking the artiste was entitled to damages for the loss, not for injury to reputation already acquired, but for loss of advertisement or publicity, which, presumably, would enhance the artiste's reputation in the future. In his opinion it would not be possible to draw a distinction between an author and an actor. They were both of them artists. One was a creative artist and the other was one who interpreted. The value of publicity was no doubt the same to both of them, although the loss to an actor or actress of publicity, the actor and actress being persons who are actually seen in the flesh by the public and whose worth the public can only estimate by seeing them perform with their own eyes, was probably more serious than the loss to an author. All persons, however, who had to make a living by attracting the public to their works, were they artists (in the sense of painters), or literary men, or men who performed in other branches of the arts, such as pianists and musicians, must live by becoming known to the public. One way in which they could expect remuneration and expect employment was by achieving that their name should be before the public. In his opinion, therefore, as the plaintiffs had been deprived of screen credit, they must have suffered damage, and damage which was not nominal. He was accordingly bound to give a separate sum to each of them, and he would assess the damages in each case at £100.

COUNSEL: *J. Busse*, for the plaintiffs; *Pritt*, K.C., and *C. H. Duveen*, for the defendants.

SOLICITORS: *Samuel Tonkin, Booth & Co.; F. M. Guedalla & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

At a combined meeting of The Halifax Incorporated Law Society, Ltd., and The Halifax Law Students' Society, held at Hopwood Hall, Halifax, on the 30th September, the following resolution was passed: "It is with very deep regret that the members of The Halifax Incorporated Law Society and the members of The Halifax Law Students' Society in meeting assembled learn of the death of His Honour Judge McCleary, and they desire to place on record their high appreciation of the very efficient services rendered by him as judge of No. 12 Circuit and the pleasant recollections they have of their happy associations with him. Also that they tender to Mrs. McCleary and her two daughters their sincere sympathy in the great loss sustained by them."

THE LAW SOCIETY AT NOTTINGHAM.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

(*Continued from page* 777.)

Mr. Dingwall L. Bateson (London) read the following paper :—

The Work of the Council of The Law Society.

It is not many years since the title to this paper would have been generally held, though quite wrongly, to contain a contradiction in terms, because it seems to have been commonly believed by members of the profession that the Council in fact did no work.

Recently, however, there appears to have arisen a much greater interest in the Council and its operations, as a result of which it was thought by members of the Council that this paper could be read with some likelihood of appreciation. Although I am a member of the Council (and it is obvious that the writer of the paper must be a member of it) any views which are here expressed should be treated as personal, though I think you may take it that such facts as appear are all authentic.

There are fifty members of the Council, consisting of ten extraordinary members (who are provincial solicitors elected by certain of the Provincial Law Societies for a term of three years in each case), eleven ordinary members (who are also provincial solicitors nominated but not elected by the Provincial Societies), and twenty-nine other ordinary members, who are usually Londoners. All ordinary members are subject to election by the general members of the Society, and in fact they come up for re-election about every three years. It is not necessary to say more on the subject here, except that in considering the proportion of London members to countrymen it should be borne in mind firstly that in the nature of things the whole work of the Council falls to be carried out in London, and secondly that the supply of fresh blood to the Council is ensured by a provision that two London members must retire from the Council annually unless there are vacancies caused by death or retirement. You will doubtless agree that it is a great tribute to the enthusiasm and energy of the country members of the Council, many of whom have to travel long distances, that they can, and do, share so freely in its deliberations and decisions.

The President and Vice-President of the Council are elected annually by its members, and one of these officers must by the charter be a London solicitor. This regulation exists since it is clear that the duties of the President, or in his absence the Vice-President, would be difficult if not impossible of performance if both holders of the offices had their places of business in the country. Subject to this proviso, unless any member expresses unwillingness to stand, the general practice is for the two senior members of the Council who have not previously held office to be elected.

I should have thought it was hardly necessary to say that but for the genuine questions on the subject which are frequently asked, members of the Council are not remunerated directly or indirectly as such.

The Council as a rule meet every Friday and keep approximately the same terms as do the Law Courts. Except when matters of great importance require attention, e.g., the Accounts Rules under the Act of 1933—very little controversial business is done on these occasions, and the reason for this is that the average attendance of members is about thirty-five, which necessarily tends to make the meetings unwieldy. The two main things done are the discussion of and decision upon reports from the various standing or special committees and the reference to them of new business. It is the business of these committees which represents the real work of the Council.

Before proceeding further I must spend a little time on history, and I think it should be made clear that The Law Society was originally and still is a private institution. It actually came into being in 1739, although not established until 1825 as a Society. It has been managed by a President and Council since the year 1845. Its object originally was the promotion of professional improvement, and I do not think it is wrong to say that that object has always been and still remains its primary work. I cannot do better than refer you to the Society's handbook, which will show clearly how the Society by virtue of its representative capacity, and the close attention which it has given to the interests of the profession has, through the course of years, attracted to itself its present multifarious functions, including, for example, the office of Registrar of Solicitors, who has the custody of the Roll and who each year issues more than 15,000 practising certificates. The registrar also keep a complete record of those to whom certificates have been issued.

In 1888, and again in 1919, the Disciplinary Committee, which is not a committee of The Law Society, but a statutory committee (appointed by the Master of the Rolls, and consisting of past or present members of the Council), was given statutory power to deal with complaints of professional misconduct. The 1919 Act (now consolidated in the Act of 1932) empowered this committee not merely to hear applications, but actually to inflict a penalty. I should like to emphasise the fact which I have just mentioned, and which is not commonly appreciated, that this committee is not in any way part or subject to the control of the Council as such. The members of the committee are, rightly, extremely jealous of their powers and are always more than careful to withdraw from the Council if any subject is being discussed which remotely concerns proceedings before them.

The Council have other statutory duties, the most important of which are perhaps the registration of articles of clerkship, the duty of seeing to it that there has been proper service under articles, and the right to withhold the renewal of practising certificates if there has been a lapse of more than a year. In addition, the Society can and does institute proceedings before the ordinary courts against unqualified persons who pretend to be solicitors, or who have prepared for profit legal documents, or documents relating to grants of probate or letters of administration. Under ss. 51 and 52 of the Act of 1932 the Society can prevent solicitors from allowing unqualified persons to practice in their names and from employing persons who have been suspended from practice or struck off the Roll.

The President of The Law Society for the time being is always made a member of the committee dealing with remuneration in conveyancing matters, and while on this subject I should like to draw your attention to the fact that it was your Council who recently succeeded on your behalf in persuading a sympathetic Lord Chancellor to restore the cuts in solicitors' remuneration which were made at the time of the national crisis in 1931.

In recent years two extremely important Acts of Parliament have been passed, both promoted by the Council, and both, I think, likely to have a tremendous effect upon the future of the profession. The first was the Solicitors Act of 1933, which, as you know, enables the Council to make rules of conduct. The first set of rules under this Act came into force on 1st January, 1935, and provided for the keeping of separate accounts for clients' moneys. The passing of this Act and the making of the rules under it were the cause of much heated argument within the profession, and I think it is no secret that there were probably more members of the profession opposed to the making of the rules than in favour of them. It is, however, significant that since they came into force I have heard nothing but praise for them, and I doubt if there is any solicitor now practising who really objects to their existence. The rules have already been used with considerable effect and will doubtless prove instrumental in many cases in preventing unfortunate solicitors from getting into serious trouble.

There has recently been signed by the Master of the Rolls a second set of rules under this Act dealing with the vexed questions of touting, undercutting, profit-sharing, and certain legal aid organisations. These rules will come into operation next month and, except for the one dealing with the last-mentioned subject, they do not really represent new law. They merely make an attempt to reduce into writing certain principles the non-observance of which has always in fact been either a legal or professional offence. These rules will not affect the great body of responsible solicitors, but the profession is now so large that the Council have felt it necessary to provide machinery for dealing with the few whose ideals are not satisfactory. It is a pity that our great profession should have had to come at last to laying down in writing a

code of conduct, but times change, and this course has, I think, become inevitable. As a matter of fact, I very much doubt whether proceedings under these rules will be anything but rare, but the Council hope and believe that they will have an educative value which will prove to be of use.

The Act of 1936 which comes into force in January, 1937, is in some ways the most important Act affecting solicitors which has ever been put upon the Statute Book. There are various minor provisions in it which I need not mention, but its great provision is the giving to the Council the right and duty of enquiring into the character of persons desirous of being articled. This, I hope, is the beginning (but it is only a beginning) of a state of affairs which may eventually enable the Council on your behalf to exercise an absolute right to forbid a person whom they regard as unsuitable from starting on a career as a solicitor. Even in its present limited form, the Act gives to the Council, who, as I know you realise, will exercise their power with caution, a power of inestimable value in preventing some young men entering an already crowded profession in which they can have no prospects except of wasting some years of their lives.

So far, I have set out fairly fully the statutory duties performed by the Society through the Council. I now propose to tell you by what means these duties are carried out.

First, there is the Examination Committee, whose duties are arduous and extremely responsible. This committee is a statutory one appointed by the Council under regulations made by the Council and approved by the judges, and it has the task of recommending the appointment of the assistant examiners to set the papers at the examinations. In addition, the members of the committee themselves scrutinise those questions and all the answers to them. When you consider that there are nine examinations a year at which a total of approximately 4,000 students sit, you will appreciate the size of this task. This same committee is responsible for all questions which arise with regard to articles of clerkship and service under them and, in addition, for certifying to the Master of the Rolls that every candidate for admission is proficient in general knowledge, has duly served his articles, and is fit to act as a solicitor. This committee also controls the conduct of the solicitors' examinations held in certain colonies.

Logically, there comes next the kindred subject of legal education. Section 32 of the Solicitors Act of 1932 provides that no person shall be admitted as a solicitor unless he has attended for one year at a law school. I will not trouble you with the history of this section, but it means that The Law Society now has to maintain law schools throughout the country at which articled clerks can attend. The performance of this statutory duty is referred to the Legal Education Committee, which is responsible as well for the appointment of teachers and the preparation of the syllabus of teaching in London. To a limited extent, the committee controls the teaching in the provincial centres, and it always decides the amount of the grant to be made to each provincial centre towards the cost of that teaching. In this connection, it will interest you to know that the money for education is provided from three sources, namely, the profit from fees in respect of examinations, the profit from the fees for attending the law school, and, most important, from 15s. out of every pound which is paid to The Law Society annually by every solicitor when he takes out his practising certificate.

The present system of law schools and the training of articled clerks is a controversial subject about which two very distinct views are held, which I may roughly describe as the academic and the practical. I will not tell you which my views are, nor do I mean by the above definition that the academic view is necessarily unpractical. I do think, however, that as time passes there are likely to be radical changes in the method of education, and I believe that we shall always have a swing of the pendulum over a period of years from one point of view to the other. Time alone will show which produces the best solicitors for general purposes.

The next important committee, and I mean by important practically important to the profession at large, is, I think, the Parliamentary Committee to which is referred every Bill and every question or answer before either House of Parliament which in any sort of way affects the profession or the administration of justice. Every Bill introduced into Parliament is closely scrutinised whether it is a private Bill or a public Bill, and it may fairly be doubted whether there is any other private organisation which can and does examine legislation in this way. Experience has shown that the work done in this regard by the Society is not merely of great private value but is of considerable public importance. The Society is constantly making representations to various government departments, and it is clear from the respect and consideration which these representations receive that the work of the Society in this connection is very greatly valued by the authorities concerned.

The finance committee, although important, does not find its duties a great burden. This is for two reasons: Firstly, an extremely efficient permanent staff; and, secondly, a chairman who is the treasurer of your Society, and who devotes more of his individual time to the work of the Council than any other member of the Council. This committee, in addition to dealing with the Society's finances, is responsible for the publication of the monthly "Gazette," a publication which your excellent secretary (in a minority of one) thinks is an admirable work. The Council as a whole disagree and have tried, but so far unsuccessfully, to devise a more attractive and better publication. Their failure to do so probably means that the secretary is right, but we will live in hopes that he is not. I will not depress you with dull details of the financial side of the committee's work, except to say that the main item of the private income of the Society comes from the subscription of its members. There are less than 16,000 solicitors practising in England and Wales, and nearly 11,000 of them are members of the Society, which you will bear in mind depends almost entirely upon the subscription of voluntary members. When you recollect that most of the material advantages of being a member centre round the actual building in Chancery Lane, I think you will agree that this membership is quite remarkable. Though the subscription is a very moderate one, I hold the view personally that if the more distant country members could be admitted to membership at an even smaller subscription, it would be a rare thing to find any solicitor in the country who was not a member of the Society.

The next committee to which I think reference should be made is the Legal Procedure Committee, to which is referred all questions which arise on points of practice or construction of Supreme Court Rules. All sorts of small technical questions arise from time to time and are dealt with by this committee, which consists in the main of those members of the Council most familiar with the conduct of litigious cases.

I want now to deal with the two largest committees, namely, the Scale Committee and the Professional Purposes Committee. The former meets once a fortnight and its work consists of questions mainly in connection with conveyancing and conveyancing costs which are in dispute between members of the profession. It is no exaggeration to say that for very many years past there has been an average of about ten cases at each meeting of this committee submitted on an agreed statement of facts with a note attached to the statement signed by both solicitors concerned that they are prepared to abide by any decision which the Council may express. It is gratifying to know from the letters of thanks received that this work is much appreciated by the profession, and the more one considers the number of these disputes and the cause they would give for ill-feeling had they not been submitted in a friendly way, the more one is disposed to the view that the work of this committee is perhaps the most important branch of the Society's work. The decisions of this committee are published periodically to the Council and excerpts appear in what is known as the "Red Book" and the "Yellow Book," new editions of which you will all be glad to hear are to be published next year. The reason for their being published during the currency of your President's year of office, apart from the fact that new editions are, if anything, overdue, is that Mr. Dowson has for many years been the permanent chairman of this committee. It is unnecessary for me to say here that the work which he has done in this capacity is extremely efficient, but if you want any confirmation of this you may have it from the fact that he has been persuaded to continue in office as chairman while he is President. This is a most unusual procedure, especially with so important a committee, and though it will add greatly to his task it is most gratifying to know that he is prepared to perform these additional functions.

With regard to the Professional Purposes Committee, this sits once a week, except during vacation, when it misses an occasional Monday. This committee does a great deal of work but it is undoubtedly most interesting work which all members of the Council are glad to do. I feel tempted to state in an appendix a long list of the various matters habitually dealt with by this committee, but such a list, apart from adding greatly to the bulk of this paper, would not be of interest except to the enthusiast. Broadly speaking, however, the important work falls under the following heads:—

(*a*) Questions as to the employment of articled clerks.
(*b*) Disputes between solicitors and members of the Bar.
(*c*) Complaints against solicitors.
(*d*) Profit-sharing.
(*e*) Prosecution of unqualified persons.

(*f*) Touting.
(*g*) Undercutting.
(*h*) All questions of professional conduct and etiquette.
(*i*) The conduct of proceedings before the Disciplinary Committee.

The chairmanship of this committee, unlike that of the Scale Committee, is taken in rotation by a member of the committee. He holds office for a limited period (usually about three months) and his work while it lasts is very burdensome. An average of forty cases have to be dealt with every week and the whole of the papers of those forty cases are delivered to the Chairman on Friday, and he has to digest them so as to put the facts before the committee on the following Monday. Many suggestions have been devised for trying to simplify this task but hitherto these have not met with any great success. The work requires enormous care, particularly as this committee is the mouthpiece of the Council as prosecutor before the Disciplinary Committee. It is extremely important therefore that mistakes should not be made, and I think it may be that as this particular branch of the committee's work must occupy about half its time it will in the future be dealt with by an entirely separate committee having no other duties.

There are various other standing committees of importance but not of great general interest. Most of you have knowledge of one, namely, the house committee, as you have probably all complained from time to time, sometimes with justice, but generally without, of the conduct of the club rooms of The Law Society's Hall.

The foregoing will, I hope, have given you some idea of how we do our work and what it consists of, and now I would like to tell you of some things relating to the Council which you may find interesting. The first is the question of Poor Persons' Procedure. Until 1913 this procedure was regulated by rules of court. Up to that time, if the poor person could show that he was not worth £25, he was excused from fees and was entitled to have assigned to him counsel or solicitor or both to assist him, but it was the duty of no one to make enquiry or investigation into the matter before an order was made. This procedure had defects so obvious that I need not mention them. In the year 1913 the Council decided that it was desirable that The Law Society should seek to co-operate to put this state of affairs right. Nothing could obviously be done until after the War, but immediately thereafter certain rules which had been issued came into force, and an office which had been set up in London as a Government Department to deal with the procedure was overwhelmed with applications. By 1923 the congestion of this department had become so serious that a departmental committee was set up to enquire into the whole situation, and on this committee two members of the Council sat. As a result, the Council, with the co-operation of the provincial law societies, offered and were allowed to take over the whole and sole control of the work. The Government Office was transferred to the custody and care of The Law Society, the congestion has disappeared, and the work is now carried out expeditiously, and (although not apparently altogether appreciated by the public) satisfactorily. I hope it will not be thought unkind to say as I have done that the public do not appreciate the work, but the fact remains that on the whole the poor persons who receive the benefit seem to think that they are entitled to what is done as a matter of right, which is, of course, far from being the case. It is perhaps not the place to discuss the merits or demerits of the scheme as it now exists, but I for one believe that the work would be more appreciated if certificates were granted not necessarily entirely free of expense. I think if the litigant who could afford £10 instead of £5 and so on up the scale were granted a certificate on payment of that sum into a common fund, the character of the work would not suffer and the public would be educated to appreciate its blessings.

Another subject to which I would like to make reference is the staff, and I mean by the staff, the administrative staff of the Society. When you consider that there are over 11,000 members, it is indeed remarkable that the government of their affairs under the Council is conducted by a secretary who has only two qualified solicitors under him, one of whom is the assistant secretary. The whole of the staff including the Secretary only consists of twenty, and you can guess from what has gone before in this paper how extremely hard they must work. The total number of Council and committee meetings held in the year is in the neighbourhood of 250 (in excess of one a day if Saturdays, Sundays and vacations are disregarded) and the secretary himself, usually accompanied by one of his admitted assistants, attends at least 90 per cent. of them. This is a very remarkable state of affairs and I want you all to realise that without the help of Sir Edmund Cook and his assistants the Council's work would become impossible of performance.

I have not so far mentioned the relationship of the parent Law Society in London and its large family of sturdy children, the Provincial Societies. These Societies, both directly and through their most efficient ambassadors the country members of the Council, not only send to the Council a great deal of the material with which the Council has to deal, but in all matters of paramount importance act as general advisers to the Council, so as to keep London in touch with the feelings and view of the country. The system is one of which many of you know more than I do, but you will agree, I feel sure, that it works well, and you can rest assured that in fact those feelings and views are always given the closest attention.

It is not infrequently that you make and I hear remarks about the personnel of the Council. These remarks are rarely, if ever, flattering. Usually they are quite the reverse and seem to be based on the quite erroneous belief that most of the members have one foot in the grave, and that the remainder ought to have both. I do not know what the average age of the members of the Council may be, but I am certain that it is lower than you think, and I am equally certain that some of the best members of the Council are the oldest. In this connection I would like you to pause and consider to whom any one of you would turn for advice in the unlikely event of finding himself in a really awkward professional predicament, and I venture to say, in London at any rate, and probably too in most of the big provincial cities, one of the first names that would come to your mind would be that of one or other of the senior members of the Council.

Please remember, too, as you will realise by reading the names of the members of the Council, that they are a fairly representative lot. I am not by this remark boasting on their behalf, but trying to make it clear that whatever their defects may be their means of knowledge are exceptional; the members are drawn from offices where every branch of solicitor's work is done, and there is always someone who has special knowledge, or, more important, means of knowledge about whatever subject comes up for consideration. It is often said of us—I have heard it said in the hall at an annual meeting—that the Council consists of members of large or important firms who have no knowledge or consideration for the smaller and less distinguished practitioners; this is greatly exaggerated and you will be glad to know it. Some members of the Council do come from big firms and their assistance as such is invaluable. Many of them, however, do not, and all of them have much greater thought for the solicitor in a small way of business than for his more prosperous brother, who can look after himself. As an example of this, I would tell you that at the time the accounts rules were being discussed the case of the humbler solicitor was being constantly discussed, and his case was just as constantly considered, though, in point of fact, these rules, in so far as they were difficult or irksome to put into operation, bore far more hardly on the large office with complicated books of account.

One last word about ourselves before I finish, which is to say that we are not as a body intolerant of censure. We realise that we are the titular governors of a learned profession, made up of some 16,000 learned men, and in consequence we understand that if you make criticisms they may be well founded. At the same time, we do ask you not to make criticisms without being sure of your facts, and, above all, without finding out first what attention the subject in which you are interested has already received from the Council. I assure you that if you ask for information you will generally be surprised at the amount which exists, and you will often be given facts of which you had never thought and which will lead you perhaps to refrain from censure.

Having told you of various things done by the Council, I want to end by telling you of one thing which might well be done by the general members of the profession to help us. I want to suggest to you that the attendance at the annual general meetings in London during July and the special general meetings in January are most inadequately attended. In addressing you thus I am probably speaking to those comparatively few who actually do come to these meetings with some regularity, but I hope there are some here who do not and who will think well of this suggestion in future. It is not very long since an advertised resolution put by a solicitor in the hall was voted upon by the grand total of less than twenty persons, and you will doubtless all agree that this cannot properly represent the opinion of the profession on any subject. I would remind you in this connection that the Press attend these meetings, which are reported as if they were representative, and I ask you therefore as some return for the work which the members of the Council do for you to come in future to the half-yearly meetings and bring your friends in the profession with you.

Sir REGINALD POOLE (London) remarked that the Council lunched on Friday, at 2 o'clock, and every member paid for his own lunch, the minimum charge being three shillings.

Mr. G. E. HUGHES (Bath) said that the fact that members of the Council did all their work without remuneration could not be too strongly emphasised, especially in the case of provincial members who travelled long distances. He suggested that the time had come when the societies should consider paying the expenses of provincial members attending meetings. If younger members were to be invited to submit their names for membership of the Council, the expense was a very real difficulty to them. It was the Council's constant endeavour to popularise the Society with provincial members. Many provincial solicitors were at a grave disadvantage in not being able easily to obtain books, and it might be a popular action to establish lending branches of the central library. Those provincial solicitors who travelled up to interview clients in London often had difficulty in finding a place to meet them. Could arrangements perhaps be made, he asked, whereby a consulting room might be available without charge at Chancery Lane? Further, had not the time come to approach the Government with a request to abandon the solicitor's tax—or at least a part of it? Other professions were not taxed in this way. Solicitors did a great deal of work under the Poor Persons Rules and in the cause of education, and the Government ought to help them. In conclusion, Mr. Hughes read and reiterated remarks he had made at the Eastbourne meeting in 1928: "Although it is, or should be, common knowledge that the Statutory or Disciplinary Committee work independently of the Society under their own secretary, the development of the Statutory Committee into the disciplinary body of the profession is, perhaps wrongly, but none the less insidiously, giving rise to a feeling that the Society itself exists increasingly for the purpose of investigating, and if necessary punishing, cases of professional misconduct, whilst what one may term the trade union aspect of the Society's activities plays a subsidiary role. In order to combat this feeling I would urge that the "trade union" aspects of the Council's functions be still further emphasised, and that they create, if necessary, a new committee, which would work wholly independently and constitute an advisory or professional protection committee to whom members in difficulty, whether financial or otherwise, could, with confidence, appeal. Thus, a member whose auditor refused a certificate that his books were in order would refer at once to the Advisory Committee, who, upon due investigation, if satisfied that the case was one of hardship, where the member had been, say, the victim of some dishonest client, would be empowered to come to his assistance financially. Again, a member threatened with an action for negligence could put his case before the committee, who, if satisfied with the *bona fides* of the defence, would defend the action at the common charge. Yet, again, a member faced with an important legal point with the Inland Revenue on his accounts, and with appeal to the House of Lords (and I have in practice myself known two such cases), could lay his case before the committee, who would, if satisfied, finance a test action in the interests of the profession as a whole."

Mr. G. A. C. PETTITT (Birmingham) said that there were many cases in which it was very difficult for solicitors to make a specific written complaint about any member of the profession, although it might be well known to the local committee that there was something wrong with the particular office. It would be very instructive if they could have some idea of the class of information on which the Council would be prepared to act. For example, recently in Birmingham a young solicitor had been attached for breach of an order to deliver a bill of costs in the matter of a trust; months later he had given himself up, had confessed to misappropriation and had been sentenced to penal servitude. A solicitor who had known the facts had been placed in a difficult position. He had concluded that his first duty was to his client, but, had he performed his duty to the profession and disclosed his knowledge, he might not have succeeded in recovering part of the moneys which were liable to be lost.

Sir CHARLES MORTON (Liverpool) thought that the speaker in his remarkable and comprehensive paper had failed to make his point about the reduced subscription. The country member already paid only half the London subscription and further concessions were made to the newly-qualified.

Mr. W. G. BEECROFT (Leigh-on-Sea) discussed the construction of the Council and maintained that the membership was very unequally spread over the country. Essex, for example, had to be content with a representative from Hertfordshire. The present mode of election had been established before the provincial societies had grown in number, and in his own opinion the time had come for a complete re-orientation with a more complete representation. Even if there was no local member willing to serve, the provincial society might be allowed to select a London man as their member. He pleaded also for an affiliation of all provincial societies with a charter to each from the parent society.

Mr. F. G. JACKSON (Leeds) asked Mr. Bateson to enlarge on his suggestion about the financial aspect of poor persons' procedure and how he proposed that this money should be dealt with. Supposing that a poor person had paid five pounds into a fund and the out-of-pocket expenses came to nine pounds: was the client to pay the extra four pounds, or was it to come out of the general fund? After all expenses had been met, was the surplus, if any, to go to persons who undertook this work, and if so, in what proportion?

Mr. W. H. BRIGHTMAN (London) protested at the suggestion that the client under the Poor Persons' Rules was not grateful. In his own experience and that of others whom he knew, the poor person was a most grateful client.

Mr. BATESON said it would take too long to reply to the points which had been raised, but he assured the speakers that the Council would consider their remarks.

Mr. F. G. ROBINSON (Ilkeston) read the following paper:—

COURTS OF REFEREES UNDER THE UNEMPLOYMENT INSURANCE ACTS.

Unemployment insurance is now a familiar feature of modern industrial life. It was introduced in 1911 by the National Insurance Act (Part II) as a measure of social reform and was received with a certain amount of misgiving both by those who were to contribute and benefit, and by the general public.

However, unemployment insurance has now weathered many storms for a period of over twenty-five years, and it is difficult to see how some of the major troubles occurring since 1911 could have been overcome without its assistance. The return of hundreds of thousands of workers after the war to a country not prepared to receive them, abnormal unemployment, the general strike of 1926, and a world industrial depression have been experienced, and in the absence of a cure for the ills resulting therefrom, a palliative has been found in unemployment insurance. A system of "out of work donation" assisted during the period of army demobilisation after the Great War, and "uncovenanted" and "extended" benefit have been amongst the schemes devised to assist at various times those workers who were not qualified for "standard" benefit.

The unemployment insurance scheme is based on a contributory principle, the present contribution in respect of an adult male worker being 2s. 3d. per week payable by employer, employed persons, and the Exchequer in equal one-third shares. Reduced rates of contribution are payable in respect of persons employed in agriculture who were insured for the first time by the Unemployment Insurance (Agriculture) Act, 1936. The actual contributions of employed persons alone to the Unemployment Fund for the year 1st January, 1935, to 31st December, 1935, amounted to over £21,000,000, so that the epithet of "dole" which has been used to describe the benefits paid to insured contributors is by no means justified.

At the end of December, 1935, there were over ten and a half millions of insured persons in employment and about one and three-quarter millions registered as unemployed, and it is to give but a bare outline of the procedure for the determination of the claims of this large body of persons and particularly the functions of Courts of Referees that these few remarks are intended.

The Act, having provided for compulsory insurance in certain scheduled trades, stipulated that the decision as to whether (and if so how much) benefit a workman might draw was to be made by a statutory officer known as the Insurance Officer, who gave his decision on the claim by allowing or disallowing or by referring a claim or a question therein to a Court of Referees.

If the workman was dissatisfied with the decision of the insurance officer, he was to have a right of appeal to a Court of Referees comprising one or more members drawn from a panel of persons chosen to represent employers, and an equal number of members from a panel of persons chosen to represent workmen, with an impartial chairman, who made a recommendation (not a decision) to the insurance officer on the appeal.

If the Court of Referees and the insurance officer were in agreement on any case, their decision was to be final. If the insurance officer declined to accept the recommendation of the Court of Referees, he was required to refer the case to the umpire whose decision was final and not subject to review.

By the Unemployment Insurance Act, 1930, however, the procedure for the determination of claims was altered

in several important respects so far as related to Courts of Referees. In particular :—

(1) While the insurance officer might still give a decision by allowing a claim if he thought fit, he could no longer disallow any claim (with certain limited exceptions) ; but if in doubt should refer the claim to the Court of Referees for decision. In other words, the Court of Referees had now conferred upon it the duty of giving decisions and not merely recommendations ; and

(2) The claimant was given an absolute right of appeal without having to obtain the leave of the court in all cases when the Court of Referees was not unanimous.

The persons appointed to act on the panels of employers and insured contributors are nominated by the local employment committee attached to each employment exchange. They are usually persons who have had experience of public work or as considerable employers of labour, or (in the case of the workpeoples' representatives) members of trade unions or other recognised bodies of workers.

A Court of Referees has been defined by Mr. Justice Horridge in the case of *Collins* v. *Whiteway* [1927] 2 K.B. 378, as a body discharging administrative duties which need not be performed in court, in respect of which it is necessary to bring to bear a judicial mind, that is, a mind fair and just in respect of the matters under consideration.

This tribunal is an authoritative and impartial body, with a composition of membership likely to examine the claim before it from a standpoint freed from the trammels of red tape but capable of giving a just interpretation of the law. At the same time it affords an opportunity for the claimant to present his point of view in an atmosphere different from that of the employment exchange, while the constitution of the court is calculated to preserve the unemployment fund from being improperly exploited by fraudulent or irregular claims. The statutory authorities, however, including, of course, the Courts of Referees, are strictly to follow the wording of the Acts, being absolutely bound by the language of the Legislature, and are to abstain from putting anything on the Legislature it has not said. The justification for their existence and retention is apparent when it is realised that over 442,000 claims were referred to and dealt with by Courts of Referees in the year ended 31st December, 1935. Of those, over 120,000 were allowed and 322,000 disallowed.

It is provided that Courts of Referees shall sit in convenient courts and shall deal at frequent intervals with cases so that there shall be no delay.

Power is given to the umpire insurance officer and Court of Referees, on new facts being brought to their knowledge, to revise a decision or recommendation in any particular case.

The framework of this procedure has remained with very little alteration from its inception in 1911.

The statutory authorities for the determination of claims remain to-day, as laid down by the 1911 Act, being the insurance officers, the Courts of Referees and the umpires.

Insurance officers (i.e., local divisional and chief insurance officer) are appointed by the Minister of Labour and are officials of the Ministry. The chairman of the Court of Referees is appointed by the Minister. He usually possesses legal experience and, in the opinion of the Blanesburgh Committee which was appointed in 1928 "to consider in the light of experience gained in the working of the Unemployment Insurance Scheme, what changes in the Scheme if any ought to be made," he should in future always be a man of legal training. He must not be an employer of any considerable number of insured contributors or have any connection with an employers' or employees' association, and should not take an active part in politics.

He is usually a barrister or solicitor living in the district of the court with personal knowledge of the industrial conditions of the neighbourhood.

The umpire is appointed by the Crown and there are deputy umpires. The umpire and his deputies are located in London and are members of the Bar.

The constitution of Courts of Referees has not altered materially since the inauguration of Unemployment Insurance. The chairman and members are still appointed as originally, and a considerable amount of quasi-judicial work is performed by these courts.

The conduct and procedure of the courts may be of interest to the legal profession, for, although barristers and solicitors have not the right of audience, the chairmen and reserve chairmen who number together about 370, are almost exclusively possessed of a legal qualification.

The chief functions of Courts of Referees are to consider (*a*) the circumstances of each claim for benefit or question arising on a claim referred to them by the Insurance Officer ; and (*b*) appeals made by a claimant or his association against disallowance imposed by the Insurance Officer, and to make such decision on each case as they may think proper. Before the hearing, full investigations are made by the Insurance Officer by enquiry from the employer or any other quarter, and the information obtained is supplied prior to the hearing to the claimant or his trade union representative.

It was held in *Collins* v. *Whiteway* that communications in writing made by an employer to and at the request of a Court of Referees (acting under the provisions of s. 11 of the principal Act) relating to a person formerly employed by him, who is an applicant for benefit, are made upon a privileged occasion. Having regard to the duties of the Court of Referees, such privilege is "qualified." An action for libel brought by such a person against his former employer in respect of these communications will, therefore, not succeed unless the plaintiff is able to prove malice on the part of the defendant.

The claimant is always notified or summoned to attend, and the employer (in certain cases) may be asked to attend, and witnesses may be called as necessary. Evidence is not taken upon oath, but penalties are imposed for making any false statements by any person for the purpose of obtaining benefit or payment.

The claimant is entitled to be represented at the hearing by any person duly authorised on his behalf (except a legal practitioner) and he is in fact frequently represented by his trade union secretary. It is noteworthy that the latter in innumerable cases gives valuable assistance to his members and to the courts by the able and concise manner in which his points are presented and the good feeling invariably displayed is beyond praise.

The court is private and not open to the general public, and the press is excluded.

A claimant is required to satisfy four statutory conditions relating to—

(*a*) Payment of contributions ;
(*b*) Continuous unemployment ;
(*c*) Capability and availability for work ; and
(*d*) (In certain cases) attendance at an authorised course for the purpose of becoming or keeping fit for entry into or return to regular employment.

The issues usually dealt with by Courts of Referees are :—

(1) Employment left voluntarily without just cause.
(2) Employment lost through misconduct.
(3) Failure or refusal to apply for or accept suitable employment, or failure to carry out written directions or neglect of opportunity, given him with a view of assisting him to find suitable employment.
(4) Not being capable of, or not being available for, work.
(5) Dependant's benefit.
(6) Not being unemployed.
(7) Failure to satisfy the Anomalies Regulations (in the cases of married women, seasonal workers and persons who normally work on not more than two days a week).
(8) Contribution conditions not fulfilled.
(9) Trade dispute cases.

Difficult points both of law and of fact are likely to be dealt with during a session of the court and are frequently argued with skill, but as a rule a sitting does not last more than three hours. Questions involving large sums of money may arise, i.e., in the case of a trade dispute case affecting hundreds of workmen who may be disqualified from receiving unemployment benefit if their employment is lost by reason of a stoppage of work due to a trade dispute at the factory or premises at which they are employed.

A note of the evidence is taken by the chairman, together with the findings of fact material to the decision. The decision of the majority of the court is the decision of the court, but if, owing to the absence of a member of the court, opinion is equally divided, the chairman has a casting vote. The chairman may act alone (with the written consent of the claimant) but the court cannot function in the absence of the chairman. Women members (also drawn from panels as in the case of men) act with the chairman to hear the cases if women are claimants.

The written notes, evidence and findings of the decisions and (when the decision is not unanimous) the dissenting views and the reasons for them are recorded by the chairman, and the claimant, whether successful or unsuccessful, is supplied with a complete copy thereof.

The claimant is also notified before leaving the court of the result of his claim.

In case of an appeal to the umpire, either by the insurance officer or the claimant or his association, the chairman's notes are important, as the umpire has not as a rule the advantage of hearing the claimant and witnesses, although in important cases they may be invited to attend before him in London.

In addition to the claimant's absolute right of appeal to the umpire in all cases where the decision of the court is not unanimous, the claimant may also appeal with the leave of

the chairman in any other case on making an application in proper form. Such leave should be given if it appears to the chairman that there is a principle of importance involved or any other special circumstances by reason of which leave to appeal ought to be given. A decision may also be appealed against at the instance of an association of employed persons of which the claimant was a member when last employed. The insurance officer may also appeal, and in fact frequently does so, whether the decision is for or against the claimant. The appeal to the umpire serves to harmonise the principles on which Courts of Referees and insurance officers decide cases, as the decisions given by the umpire are binding upon Courts of Referees in all subsequent cases which clearly fall within these precedents. An analysis of these decisions, which number many thousands, is published in volumes and issued from time to time to the chairman and supplied for the use of the court, and the chairman must acquire a good working knowledge of this really important mass of case law.

The umpire (who has four deputies) gave 8,746 decisions during the year 1935. Appeals were allowed in 5,087 cases and disallowed in 3,659 cases.

It is hoped that the few remarks which I have ventured to set down may be of some interest to lawyers, who are not likely to have personal experience of the working of Courts of Referees unless as members of a court. It may also help to assure both members of the public and claimants that the procedure for the determination of claims relating to the payment of vast sums of money is conducted with the fairness and impartiality which should characterise such proceedings, and that those members of the courts who give their time and service voluntarily to this work may continue to deserve the tribute of the Blanesburgh Committee that "Courts of Referees inspired general confidence."

Mr. T. Hidderley (Stockport) thought it undesirable that Mr. Robinson's paper should go out from the meeting without a comment being made on the infinitesimally small number of cases of fraud.

Mr. Isidore Kerman (London) read the following paper:—

Problems of the Law of Defamation in Relation to the Press, Literary Work and Broadcasting.

It will no doubt have been observed that there has recently been some movements seeking a reform of the law of libel. In *The Times* newspaper some thirty or more authors, including many of unquestionably the highest attainment, have subscribed a letter pleading for "drastic reforms in the law relating to literary libel." A report has appeared of a discussion at a representative conference of a section of the Press at which a suggested Bill to amend the law of libel was put forward, and it is, I think, not unfair to say that the demand for reform emanates substantially from or on behalf of those who have been or may be made answerable for defamatory publication rather than from those who may be impugned. I shall hope to deal as shortly as may be with the substance of the demand which I have indicated, and at the same time to submit that such reforms as may be required is merely in the clarification of a wholesome and beneficent branch of the common law rather than a cutting down of the rights which it has conferred.

In the foreword to the work of the late Mr. Clement Gatley on the Law of Libel and Slander, Mr. Justice McCardie wrote: "The value of good character and reputation was never greater than to-day. In recent times there has been a vast increase in the range and power of the press, accompanied by an equally striking expansion of other means for the circulation of defamatory matter. Thus it may become more necessary than ever for many citizens to invoke that branch of our law which protects the good name of man and woman." I cannot think that anyone would be heard to controvert the overriding importance of affording adequate protection in such a matter. Nevertheless the proposals put forward in the suggested Bill would give no redress without proof of actual damage for any defamatory statement whatsoever, unless published in relation to the office, profession or trade of the plaintiff or imputing a criminal offence, certain forms of disease, or immorality in the case of a woman. It is apparently thought by the supporters of such a measure that it should be lawful to impute to any man or woman with complete falsity conduct of the most degraded character, provided that it does not fall within the narrow limitations of the proposed new law. Imagination would need to be wide to encompass the infinite variety of hurtful and defamatory, yet entirely false, statements which it would henceforth be lawful to make. It might, for example, be published of a man that he was immoral, ill-mannered, careless, greedy and (except where his office, profession or trade is concerned) thoroughly unscrupulous, and a man with whom no decent person would associate. These or similar disagreeable observations could, so far as I can see, be systematically published from day to day without being actionable *per se*. Is it not obvious that proposals of such a character as we are now discussing result from a failure to observe a reasonable sense of proportion upon a matter of serious importance?

I do not think that it would be fitting to enter into a close examination of the text of the suggested Bill in this paper, but I would point out that, after providing that only those imputations which are within the categories set out above should be actionable *per se*, the suggested measure introduces in relation to accusations of immorality in the case of a female and of imputations in relation to the plaintiff's office, profession or trade the peculiar provision as to costs of the Slander of Women Act, 1891. That provision, it will be recalled, limits the amount of the costs recoverable to the amount of the damages unless the judge certifies that there was reasonable ground for bringing the action. This has always been, in my view, a peculiar and anomalous rule, the like of which is to be rarely, if at all, encountered in any other branch of the law, and in practice it is ineffectual, as cases do not occur in which a woman, having established that she has been unjustly accused of unchastity or adultery, is refused the judge's certificate that there was reasonable ground for bringing the action or, at any rate, if there are such cases, I do not know of them and they must indeed be peculiar.

What possible warrant there can be for introducing a similar provision as to costs where the action is brought in respect of a libel upon the plaintiff in the way of his business it is difficult to perceive, but I should surmise that the theory of the matter is that the speculative element introduced thereby as to how much costs might be recovered would give pause to a speculative solicitor not sufficiently hardened to indulge in a speculation upon speculation. It is not explained upon what principle a differentiation is made between the cases where such a limitation upon recoverable costs is to be introduced and the cases of imputations of crime or disease which are to remain exempted therefrom, nor, indeed, are a variety of other obvious questions answered in *The Times* newspaper of the 10th June, 1936, in which the proceedings at the Press Conference are described. I do not suppose there is any risk at all of a hasty, ill-considered and by no means disinterested measure being thrust upon the Statute Book at the instance of the Press, and I have perhaps discussed the matter inordinately in point of length, but I do not lose sight of the great power of the Press which, in the present matter, is without articulate opposition from those to be affected, there being by the nature of the case no representative institution or body which might reasonably act in common and in voicing an opinion.

In the plea of the authors for drastic reform, they have stated that under existing conditions many of the "great classics of the past" could not have been published without grave risk of suppression, and they see in the present law a serious threat to the quality of English literature. I believe that I correctly interpret their complaint—at any rate, in the main—to be that dishonest persons pretend to recognise themselves in some purely fictional character and proceed to exact heavy damages from unintelligent juries, notwithstanding a presumably lucid and clear exposition of the matter in the summing-up of the trial judge. Such a complaint proceeds upon a complete misconception of the position and a misreading, if, indeed, it has been read, of the decision in *Hulton* v. *Jones* [1910] A.C. 20. The test of liability, as explained in that case, is whether reasonable people would think that the publication in question in fact referred to the plaintiff, while, as to the fitness of the jury to decide upon such questions, the words of Lord Loreburn, L.C., at p. 25, may appropriately here be cited: "There is no tribunal more fitted or more competent to decide in regard to publications—especially publications in the newspaper press—whether they bear a stamp and character which ought to enlist sympathy and to secure protection. If they think that the licence is not fairly used and that the tone and style of the article and the libel in question is one that is reprehensible and ought to be checked, it is for the jury to say so."

Reference is made in the memorandum of the authors to "unscrupulous persons alike among laymen and members of the legal profession" to whom it is said that the present conditions are a direct incentive.

I do not know what degree of investigation or reflection justifies a representative body of one profession in making a blunt public attack upon another profession, but even the most irresponsible or temperamental genius should in such matters retain some rough balance at least. The speculative solicitor is an unlovely spectacle, notwithstanding

that a former Lord Chief Justice of England has described speculative actions as perfectly consistent with the highest honour (provided, of course, that the solicitor believed that there was a *bona fide* cause of action), and everything which can reasonably be done to discourage the speculative element in the profession would doubtless receive a general welcome within the profession. In the domain of the personal injury cases, the speculative action has its particular problems, although I believe that with the virtual abolition of trial by jury in such actions, and the introduction of the New Procedure, the number of doubtful cases, and certainly of cases which are obviously baseless, has steadily shrunk. There is, however, no sort of analogy with actions of defamation. An action brought by an impecunious person based upon a pretended recognition of himself in the portrayal of some fictional character is an utterly exceptional occurrence, and the idea that any solicitors are to be found who seek or undertake litigation based upon such material is not worthy of further discussion. I believe that in cases where employees bring actions against their employers or where quarrels of neighbours are magnified into slander actions they may find their way into the court through the office of a speculative solicitor who knows that the defendant has everything to lose and nothing to gain, but this is a matter apart and affords no support for the somewhat intemperate words with which these distinguished authors have assailed the profession of the law. I think that it is true to say that a certain number of actions are brought against authors, publishers and newspapers by persons who know that defamatory matter published of them can be fully justified and any suggestion which would afford protection against such abuse would be of value, although none such is made so far as I am aware. On the other hand, those who make their capital by publication of defamatory matter should not complain too loudly because their capital, like that in other forms of commerce, is sometimes at risk in the making.

Even here it will be remembered the law protects persons of bad character from false allegations, and the tendency to pursue a fallen man by a series of sensational and fabricated accusations against him has been checked by the award in some recent cases of very substantial damages, which shows that public sentiment rests on a more generous and dignified foundation than may always be appreciated by the defendant in actions for defamation.

There is one matter upon which I should wish to make a few comments, and it is the question of the adaptation or amendment of the law to meet the situation created by the advent of wireless telephony or "Broadcasting." The law of slander differs substantially from the law of libel and, broadly speaking, stands somewhat as the suggested bill which we have been discussing would define the law of libel. The distinction is not to be found in the Roman law or the modern law of many countries, but one reason, at any rate, which has been given for the distinction, perhaps not historically accurate, however, is that the dissemination of written material is more permanent and that it is more easily transmissible (see per Bowen, L.J., in *Ratcliffe* v. *Evans* [1892] 2 Q.B., at p. 530). To-day it may well be a question whether the publication of a libel in a newspaper or a novel is read by a greater number of persons than may have listened to the dissemination of defamatory matter by the process of broadcasting, and I suggest that at the least the liability in respect of matter which is broadcast should be placed upon the footing of libel and not of oral publication. As long ago as 1812 the distinction between libel and slander was adversely commented on by Sir James Mansfield, C.J., in *Thorley* v. *Lord Kerry* (1812), who expressed himself thus: "I cannot, upon principle, make any difference between words written and words spoken, as to the right which arises on them of bringing an action, but . . . the difference has been recognised by the courts for at least a century back." He further said that if the matter were for the first time decided at that day (i.e., 1812). "I should have no hesitation in saying that no action could be maintained for written scandal that could not be maintained for the words if they had been spoken." A Select Committee of the House of Lords was appointed in 1843 to consider the law of defamation and libel before which eminent judges gave evidence and advocated the abolition of the distinction which, in their opinion, "rested on no solid foundation," and they reported that "whenever an injury is done to character by defamation (of whatever kind) there ought to be redress by action."

With the introduction of an entirely fresh phenomenon into human affairs there is perhaps a natural tendency to harmonise so far as possible the old with the new by bringing the new into line with what has gone before. No doubt it would first appear that statements which are broadcast are disseminated by use of the spoken word. An interesting examination of this question may be found in the judgment of Romer, L.J., in *Performing Right Society* v. *Hammond's Brewery* [1934] Ch. 121, at pp. 137, 138, where it was held that a performance broadcast by the B.B.C. and made audible to visitors by a receiving set and loud speaker at the defendants' hotel was a performance given or authorised by the defendants in that they had caused to be heard sounds provided by the performer. This would seem to involve that any defamatory matter which is broadcast would be published not merely by the broadcaster but by everyone who permitted the broadcast to be heard through his receiving set. However, the principal question, and one of the greatest importance, is whether legislation is not required to impose upon the publication of matter by broadcasting a special liability, whether akin to that of the law of libel or otherwise. It is, I think, quite certain that to treat broadcast utterances as purely a form of slander and subject to the same rules of law cannot be justified.

Where the matter assumes the very greatest importance is in relation to that class of false statement which is not in its nature defamatory at all, but occasions injury, such, for example, as a statement that a trader's wares are not satisfactory. Unless the statement can be construed as defamatory of the plaintiff (which is frequently by the nature of the case impossible), no cause of action is created in the absence of express malice, or at any rate the balance of authority is very strongly, if not conclusively, in favour of such a view (see *White* v. *Mellin* [1895] A.C. 154). Obviously no question of express malice would arise where the broadcasting authority was concerned, other than in a most exceptional case. It would, therefore, appear to result, upon the present state of the law, that, for an erroneous statement published to the world occasioning a complete ruin, the citizen may have no redress whatsoever.

In my submission the time must come, if, indeed, it is not already at hand, when it should be seriously and carefully weighed whether a definite code should be enacted in respect of publication by broadcasting in which there should be a liability within proper limitations for all erroneous matter stated concerning the private individual or trading concern, and in which code the provision of the law concerning the element of malice should find no part. It might also well be considered whether a right to compel the broadcasting of any correction or withdrawal of defamatory or erroneous matter should not be vested in the court or otherwise provided for.

Reverting to the general question of the reform of the existing law of defamation, as I ventures to suggest above, the perplexity which does no doubt arise in many cases is the result of the absence of any clear definition of defamation, and I think also, to some extent, by reason of the confusion or identification between matters of law and construction and matters of opinion. In the recent case of *Sim* v. *Stretch* (1936), 52 T.L.R. 669, the House of Lords reversed the majority decision of the Court of Appeal upon the question of whether certain words were capable of a defamatory meaning. The Court of Appeal had upheld the trial judge in the view that the words were so capable. The difficulty of the matter is made apparent by the mere statement of such a division of view. Now it is common enough no doubt to have conflicting views on matters of law, but such views result from an examination of authorities, and a line of reasoning based upon them, and do not depend upon individual reaction or outlook. To decide, however, whether what is imputed by certain words is defamatory is, I submit, a question of purely individual opinion, while to decide whether certain words are capable of a particular meaning is a question of grammatical construction, and whether words are capable of a particular meaning and whether a particular meaning is defamatory are, indeed, two separate questions. Lord Atkin, in the case cited, states that it is well settled that the judge must decide whether the words are capable of a defamatory meaning and that it is a question of law. In my respectful submission there is no value in the division of the functions of judge and jury in actions for defamation. If a jury can be trusted to decide whether words in fact bear a defamatory meaning, they can be trusted, surely, to decide whether the words are capable of bearing a defamatory meaning, while, on the other hand, once the judge has to decide whether the words are capable of a defamatory meaning, it would seem to be still very much a question of construction whether the words in fact bear that meaning. In the construction of a written document the judge does not first decide whether it is capable of bearing a particular meaning as a matter of law, and then whether as a matter of fact, it bears that meaning, but he decides integrally as a matter of law what meaning the document bears. Lord Atkin proposes a test to decide whether words are defamatory, namely, "would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?" I would suggest that in all cases it should be left entirely to the jury to decide

that, or a similarly defined question, aye or no. It would remove what is essentially a matter of individual impression into the realm of a decision of fact by twelve unanimous beings, and achieve some measure of finality, which is at present wanting, in place of the difficulties and confusion with which the whole matter remains beset.

I would conclude by submitting that, except for the need for greater precision and closer definition of the law, if such is capable of achievement, we are in this country most fortunate in the evolution of our law of defamation. There has not been, as is supposed, some change in the law from the days when literary output attained its greatest beauty, while the intrusion of the public press upon the private trials, triumphs, sorrows or misfortunes of the individual would still appear to find ample scope within which to indulge itself. That juries are prone to award heavy damages for the wide publicity given by the film or the press to that which is defamatory is not necessarily an indication that insufficient licence is allowed, but it may, on the other hand, be the index in which is recorded the continued preference of English people for restraint and courtesy in the place of a sensational and obtrusive national press such as is to be found in some other countries.

Mr. J. A. Howard-Watson (Liverpool) urged that the law of defamation should not be further watered down by legislation promoted on behalf of papers which existed largely for the propagation of awful scandals. The courts could be depended upon to differentiate between speculative actions and others. A certain proportion of the press wanted to use hard words and give hard knocks without getting any in return, but the courts of this country were open to all. If there was any question of re-arranging the law of defamation it should be done in the direction of strengthening the rights of plaintiffs. Every member knew of deserving cases where the difficulty of proving damage made it possible for those who knew the law to indulge in strong language with impunity.

Mr. E. R. Dew (London) asked whether there was any reason for the distinction between libel and slander as it existed to-day. Originally the idea had been that libel caused more damage because it was in a more permanent form, but surely a rumour going about, and being magnified as it went, was capable of doing far more damage than an article published in final form. In practice the plaintiff had only to bring two or three witnesses who said they identified him with the person in the article, and he got his damages. It was not fair that the decision in *Hulton* v. *Jones* should be made to go as far as that. Nowadays a man had only to see his name in the paper to imagine he had a case of libel. Mr. Dew did not think that it would be satisfactory for the jury to determine whether or not the words complained of were capable of bearing a defamatory meaning. This was a question of law which should always be determined by a judge. He would go further and say that the question of being capable of bearing a meaning ought not to be argued before the jury at all, as the argument might have a very bad effect on the defendant's case. The jury were apt to think that the judge really thought the words were defamatory when he had given his opinion that they were capable of having a defamatory meaning. This was a matter which could well be dealt with in chambers. Why should parties go to the expense of bringing witnesses into court for an argument of this kind? It would be better if, as soon as the statement of claim had been delivered, the defendant were allowed to issue a summons asking for a decision in chambers as to the capability of defamatory meaning. Mr. Kerman had suggested that newspapers and broadcasting corporations should be made absolutely liable for untrue statements, but this would put them into an impossible position. Considering the speed at which papers had to be produced nowadays, it was remarkable that they did not make more mistakes.

Sir Reginald Poole (London) thought it would be fatal to leave to the jury the question of whether the words were capable of bearing a defamatory meaning. The judge had difficulty enough in not showing partisan feeling, and there would be no hope for the defendant if the jury started deciding this question of law.

Mr. Kerman, in reply, pointed out that in many leading cases the decision had been a majority one, and the majority had been very small. For example, in *Capital and Counties Bank* v. *Henty*, six judges had held the words capable and five had held them incapable of defamatory meaning. A similar proportion had determined the cases of *Sim* v. *Stretch* and *Tolley* v. *Fry*. The decision of a jury would at least have some finality about it. It was extremely unfortunate for a client to go to the House of Lords and get a six-to-five opinion. He still thought that absolute liability for mistakes might be imposed on papers and broadcasting corporations. If the damage were small no doubt the cost would not be great, but enormous loss might be caused by an error such as broad casting wrongly that a certain championship final had been postponed, or ascribing a tune to the wrong composer.

Societies.

Solicitors' Benevolent Association.

This Association held its annual general meeting at Nottingham on the 23rd September, with Mr. C. S. Bigg in the chair. The Chairman reported steady progress: sixty-eight new members, a slight increase of invested capital through legacies, and a record sum (£15,424) expended on relief. The Association has left its offices in Stone Buildings, finding them too small and out of date, and has gone back to its old home in Clifford's Inn, where it will be much more comfortable and accessible. The board has been increased by two provincial directors and one London director and, to the great delight of all its members, Sir Reginald Poole has come back to the place which he vacated several years ago. There are few solicitors more devoted to the work of the Association, and in a moving speech he gave advice to members who are willing to give up time and go round trying to induce solicitors to join the Association, and existing members to subscribe more to the fund. As a means of making their appeal more vivid, he suggested that they should imagine a close friend helpless and destitute and in need of the Association's support. Developing the Chairman's remark that work for the Association was essentially a matter of individual and personal appeal and could not be effectively done through the post by a committee, Sir Reginald gave an example of the result that might be achieved by a lady solicitor of considerable personal attraction. Sir Roger Gregory instructed appellants on behalf of the Society to point out how good an insurance a subscription to the Association is, for it protects the member and his family against complete poverty if his professional efforts fail. If, Sir Roger continued, a solicitor said that he was not afraid of destitution, then there was no excuse why he should not contribute to the Association's funds and assist his less fortunate brethren. The meeting elected Mr. Harold Moore to be auditor in place of Mr. J. S. Chappelow, who has resigned owing to advancing years.

Rules and Orders.

The Redemption Annuities Rules, 1936, dated September 23, 1936, made by the Tithe Redemption Commission under the Tithe Act, 1936 (26 Geo. 5. & 1 Edw. 8. c. 43).

[S.R. & O. 1936, No. 1012. Price 2d. net.]

Legal Notes and News.

Professional Announcements.

(2s. per line.)

Messrs. Warmingtons, solicitors, of 141, Moorgate, E.C.2, announce that as from the 30th September Mr. Henry Harris Lloyd retired by mutual consent from the partnership in that firm, which will as from that date be carried on by the continuing partners Mr. Charles Herbert Stanley Smith and Mr. William Trevor Jones. The firm of Messrs. Warmingtons incorporates the firm of Messrs. Trevor Jones and Stanley Smith, of 7, High Street, Carshalton, Surrey.

Notes.

Mr. George Cruikshank, for over forty years faithful and valued clerk to Messrs. Devonshire and Co., solicitors, of Old Jewry, E.C., died at Norbury on Monday, the 28th September.

Mr. S. G. Carnt, solicitor, of Fulham, a leader of the Municipal Reform party on the borough council, is resigning his seat to become Clerk to the Kensington Bench. Mr. Carnt was admitted a solicitor in 1906.

The freedom of Bodmin has been conferred on Sir Arthur Quiller-Couch, Professor of English Literature at Cambridge University, and Mr. John Pethybridge, a former town clerk and mayor. Mr. Pethybridge was admitted a solicitor in 1883.

Mr. C. G. L. Du Cann, counsel for respondents in a motor appeal case at the Surrey Quarter Sessions at Kingston last Saturday, said "This is a case of a woman who in crossing a crossing made others crossing the crossing at cross purposes and very cross."

Mr. E. J. Waugh, who has retired after fifty-two years' service as clerk to the justices at Haywards Heath, Sussex, succeeded his late father as clerk, and is a member of a family which has given over one hundred years' service in this capacity. Mr. Waugh was admitted a solicitor in 1882.

A Votive Mass of the Holy Ghost (the Red Mass) will be said in Westminster Cathedral on Monday, 12th October, 1936 (the opening of the Michaelmas law term), at 11.30 a.m. His Grace the Archbishop of Westminster will preside. Counsel will robe in the Chapter Room at the Cathedral. The seats behind counsel will be reserved for solicitors. Will those desirous of attending please inform the Hon. Secretary, Society of our Lady of Good Counsel, 6, Maiden Lane, W.C.2, so that an adequate number of seats may be reserved.

Bow Street Police Court is shortly to extend its jurisdiction to a large area of Central London at present covered by Marlborough Street Police Court, says *The Times*. A third court has been built at Bow Street specially to deal with cases from the new area, and will be presided over by Mr. Harold McKenna, the magistrate now sitting at Marylebone Police Court. This step has been found necessary to relieve the congestion in some of the Metropolitan police courts, due largely to the vast increase in the number of motoring offences.

Wills and Bequests.

Mr. David Anidjar Romain, retired solicitor, of Maida Vale, W., left estate of the gross value of £90,897, with net personalty £90,444. He left: £100 to the Spanish and Portuguese Hospital; £25 to the Spanish and Portuguese Gates of Hope Schools; £20 each to the Spanish and Portuguese Board of Guardians, the Spanish and Portuguese Orphan Asylum, the Jewish Blind Society, the Jewish Aged and Needy Society, the Jews Orphan Asylum, the London Jewish Hospital, the Jewish Soup Kitchen, the Home for Aged Jews, the Home for Rest for Jews, the Home for Jewish Incurables, the Poor Jews Temporary Shelter, the Jewish Deaf and Dumb Homes, the Union of Jewish Women (Distressed Ladies' Fund), the Solicitors' Benevolent Association, and the Ophthalmic Hospital.

Mr. Arthur Granville Fletcher, solicitor, of Donington, left £20,719, with net personalty £16,429.

Sir William Middlebrook, solicitor, of Scarborough, left £115,464, with net personalty £110,988.

Mr. William Ewart Laycock, solicitor, of Manchester and Salford, left £10,709, with net personalty £1,341.

Mr. Albert Charles Macintosh, solicitor, of Llandaff, left £19,811, with net personalty £14,054.

Mr. Alan Stuart Alderson, solicitor, of Morpeth and Blyth, Northumberland, left £12,410, with net personalty £9,846.

Mr. Harold Warwick Berthon, solicitor, of Lydney, Glos, left £12,685, with net personalty £10,170.

Mr. Arthur Percy Spencer, solicitor, of Whitchurch, Salop, left £10,704, with net personalty £9,437.

Mr. John Malcolm Douglas, solicitor, of Alnwick, left £19,794, with net personalty £17,241.

Mr. Francis Jerrard Hunt, solicitor, of Cardiff, and of Penarth, left £37,489, with net personalty £31,183.

Mr. Alfred John Smith, solicitor, of Horsham, left £29,235, with net personalty £9,379.

RE-OPENING OF THE LAW COURTS.

SERVICE AT WESTMINSTER ABBEY, MONDAY, 12TH OCTOBER, 1936.

On the occasion of the re-opening of the Law Courts a special service, at 11.45 a.m., will be held in Westminster Abbey, at which the Lord Chancellor and His Majesty's judges will attend.

In order to ascertain what space will be required members of the Junior Bar wishing to be present are requested to send their names to the Secretary of the General Council of the Bar, 5, Stone Buildings, Lincoln's Inn, W.C.

Barristers attending the service must wear robes. All should be at the Jerusalem Chamber, Westminster Abbey (Dean's Yard entrance), where robing accommodation will be provided, not later than 11.30 a.m.

The south transept is reserved for friends of members of the Bar and a limited number of tickets of admission are issued, two of these tickets will be issued to each member of the Bar whose application is received by the Secretary of the General Council of the Bar not later than Friday, 9th October.

No tickets are required for admission to the north transept, which is open to the public.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th October, 1936.

	Div. Months.	Middle Price 30 Sep. 1936.	Flat Interest Yield.			‡Approximate Yield with redemption		
			£	s.	d.	£	s.	d.
ENGLISH GOVERNMENT SECURITIES								
Consols 4% 1957 or after	FA	115	3	9	7	2	19	10
Consols 2½%	JAJO	85	2	18	10	—		
War Loan 3½% 1952 or after	JD	107¼	3	5	3	2	18	5
Funding 4% Loan 1960-90	MN	116½xd	3	8	8	3	0	5
Funding 3% Loan 1959-69	AO	101¾	2	18	11	2	17	11
Funding 2½% Loan 1956-61	AO	92⅝	2	14	0	2	18	3
Victory 4% Loan Av. life 23 years	MS	115¼	3	9	5	3	1	4
Conversion 5% Loan 1944-64	MN	117½xd	4	5	1	2	5	4
Conversion 4½% Loan 1940-44	JJ	109¾	4	2	0	2	8	2
Conversion 3½% Loan 1961 or after	AO	107½	3	5	1	3	1	1
Conversion 3% Loan 1948-53	MS	104	2	17	8	2	11	6
Conversion 2½% Loan 1944-49	AO	101	2	9	6	2	7	0
Local Loans 3% Stock 1912 or after	JAJO	97¼	3	1	8	—		
Bank Stock	AO	377xd	3	3	8	—		
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	89	3	1	10	—		
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97	3	1	10	—		
India 4½% 1950-55	MN	117	3	16	11	3	0	0
India 3½% 1931 or after	JAJO	99	3	10	8	—		
India 3% 1948 or after	JAJO	87½	3	8	7	—		
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3	16	3	3	9	3
Sudan 4% 1974 Red. in part after 1950	MN	116	3	9	0	2	12	4
Tanganyika 4% Guaranteed 1951-71	FA	115	3	9	7	2	13	11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	110	4	1	10	2	7	2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2	12	1	2	15	6
COLONIAL SECURITIES								
Australia (Commonw'th) 4% 1955-70	JJ	110	3	12	9	3	5	8
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3	12	2	3	6	9
Canada 4% 1953-58	MS	113	3	10	10	3	0	2
*Natal 3% 1929-49	JJ	101	2	19	5	—		
*New South Wales 3½% 1930-50	JJ	101	3	9	4	—		
*New Zealand 3% 1945	AO	100	3	0	0	3	0	0
Nigeria 4% 1963	AO	114	3	10	2	3	4	4
*Queensland 3½% 1950-70	JJ	102	3	8	8	3	6	2
South Africa 3½% 1953-73	JD	108	3	4	10	2	18	0
*Victoria 3½% 1929-49	AO	101	3	9	4	—		
CORPORATION STOCKS								
Birmingham 3% 1947 or after	JJ	99	3	0	7	—		
*Croydon 3% 1940-60	AO	99	3	0	7	3	1	2
Essex County 3½% 1952-72	JD	106½	3	5	9	2	19	8
Leeds 3% 1927 or after	JJ	96	3	2	6	—		
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3	6	0	—		
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3	1	9	—		
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	97	3	1	10	—		
Manchester 3% 1941 or after	FA	97½	3	1	6	—		
*Metropolitan Consd. 2½% 1920-49	MJSD	101	2	9	6	—		
Metropolitan Water Board 3% "A" 1963-2003	AO	98	3	1	3	3	1	5
Do. do. 3% "B" 1934-2003	MS	98	3	1	3	3	1	5
Do. do. 3% "E" 1953-73	JJ	101	2	19	5	2	18	5
Middlesex County Council 4% 1952-72	MN	115	3	9	7	2	16	5
† Do. do. 4½% 1950-70	MN	116	3	17	7	3	1	6
Nottingham 3% Irredeemable	MN	97	3	1	10	—		
Sheffield Corp. 3½% 1968	JJ	108	3	4	10	3	2	0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS								
Gt. Western Rly. 4% Debenture	JJ	118	3	7	10	—		
Gt. Western Rly. 4½% Debenture	JJ	128	3	10	4	—		
Gt. Western Rly. 5% Debenture	JJ	137½	3	12	9	—		
Gt. Western Rly. 5% Rent Charge	FA	135½	3	13	10	—		
Gt. Western Rly. 5% Cons. Guaranteed	MA	133	3	15	2	—		
Gt. Western Rly. 5% Preference	MA	123	4	1	4	—		
Southern Rly. 4% Debenture	JJ	116	3	9	0	—		
Southern Rly. 4% Red. Deb. 1962-67	JJ	112½	3	11	1	3	5	6
Southern Rly. 5% Guaranteed	MA	132	3	15	9	—		
Southern Rly. 5% Preference	MA	123	4	1	4	—		

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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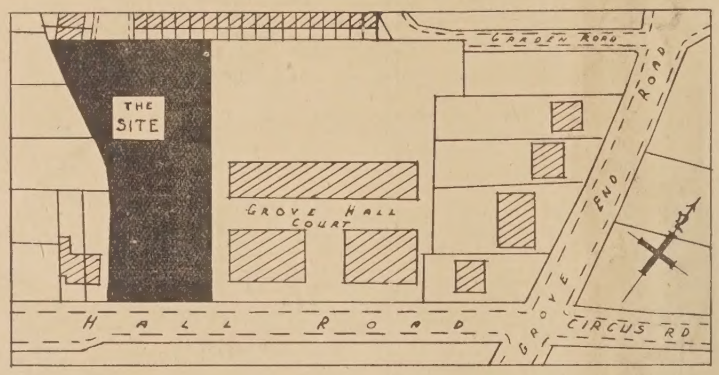

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